FILINVEST LAND, INC., PETITIONER, VS. FLOOD-AFFECTED HOMEOWNERS OF MERITVILLE ALLIANCE, REPRESENTED BY GABRIEL DELIM AND VICTOR RAQUIPISO, RESPONDENTS.

G.R. No. 165955. August 10, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari assailing the Decision[1] dated July 29, 2004 and Resolution[2] dated November 9, 2004 of the Court Appeals in CA-G.R. SP No. 77799.

The undisputed facts are:

Filinvest Land, Inc., petitioner, is a domestic corporation engaged in realty development business. Among its real estate development ventures is Meritville Townhouse Subdivision (Meritville), the first low-cost townhouse project in Pulang Lupa, Las Piñas City. The project site is located near the heavily-silted Naga River.

Respondents herein, who purchased their housing units from petitioner, are fifty-four (54) of the residents of Meritville. Subsequently, the area around Meritville was developed. New subdivisions were built with elevations higher than that of Meritville. This development turned Meritville into a catch basin from rains during the wet season and from water coming from the Naga River every time it overflows.

Due to perennial flood, respondents' townhouses suffered severe damages. On various dates, specifically on August 1, 1993, March 25, 1994, and August 11, 1994, respondents sent letters to petitioner demanding that it address the problem.

Petitioner then installed in the area a pumping station with a capacity of 6,000 gallons per minute. It also improved the drainage system. But these measures were not enough. Thus, the National Home Mortgage Finance Corporation declared the affected townhouses "unacceptable collaterals."

On June 15, 1996, respondents filed with the Housing and Land Use Regulatory Board (HLURB) a complaint against petitioner, docketed as HLRB Case No. REM-030796-9106. Respondents prayed that petitioner be ordered to upgrade the elevation of the affected areas and repair the units from Block 17 to 25. In the alternative, they asked petitioner to transfer them to its other flood-free housing projects, allowing them to "sell-back" their affected units.

In its answer, petitioner countered, among others, that respondents took appropriate measures, such as the installation of a pumping station and the improvement of the drainage, to prevent and control the flooding of Meritville; and that these measures had been approved by the local government of Las Piñas City.

During the proceedings before the HLURB, the Arbiter conducted an ocular inspection of the area and found that:

> - Flooding still recurs in the area with an average depth of approximately 1.25 meters, particularly along Medal Street...Majority of the affected houses have damaged appliances, furniture, wall partitioning, and panel doors.

- It seems that the pump provided by the owner/developer located within Orchard Homes, adjacent to Naga River, could not accommodate the volume of flood water. The said river remains to be silted and undredged by the concerned party during the time of inspection.

- The operation of the said pump was creating disturbing loud noise despite enclosed housing provided by the owner/developer.

The Arbiter also found that petitioner failed to secure the conformity of the affected homeowners before it installed its drainage system; and that it did not "observe honesty and good faith in solving the issue at bar."

On February 19, 1997, the Arbiter issued a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- Enjoining the respondent from collecting the amortization payment from the complainants until such time that the flooding problem is rectified to the satisfaction of the complainants;

- Ordering the respondent to upgrade the physical elevation of the affected streets and alleys and elevate the units from Block 17 to 25, maintaining the material specification, interior and exterior finishes, including the improvements, with the said respondent providing for free temporary shelters with complete amenities.

In the alternative, to move the affected homeowners to other flood free areas of respondent's subdivision with units of similar area on a no money-out arrangement.

- In the event the respondent would opt for a sell-back of the affected seventy-seven (77) units, the respondent is directed to compensate the complainants for each unit based on the present market value, plus expenses on improvements on the units, plus moral and exemplary damages in the amount of P25,000.00 for each complainant homeowner.

However, it is understood that to the extent that the complainants have not yet paid in full the agreed consideration, the corresponding value thereof should be deducted from the foregoing.

- Directing the respondent to pay the amount of P20,000.00 as and by way of attorney's fees.

IT IS SO ORDERED.

Upon appeal by petitioner, the HLURB Board of Commissioners rendered its Decision affirming the Arbiter's judgment with modification, thus:

WHEREFORE, the Decision of the Office below is MODIFIED with the deletion of directive No. 2 thereof. Furthermore, in order to determine the present market value of the affected lots as well as the improvements thereon for purposes of sell back, a Board of Appraisers consisting of three members, shall be constituted as follows:

- Complainant and respondent shall each select its representative.

- The parties will then pick as third member, a person mutually acceptable, to come from a list of independent real estate appraisers.

- The Board of Appraisers shall complete its task and shall submit its report to the Board within 60 days.

- The parties shall equally share the costs of the appraisers.

SO ORDERED.

Petitioner then interposed an appeal to the Office of the President.

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In its Decision dated May 29, 2003, the Office of the President "adopted by reference" the appealed judgment, thus:

> WHEREFORE, premises considered, the appeal is hereby DISMISSED. The findings of fact and conclusions of law contained in the Decision of the HLURB First Division modifying the decision of the Arbiter are hereby adopted by reference.
>
> SO ORDERED.

Forthwith, petitioner filed with the Court of Appeals a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended.

In its Decision dated July 29, 2004, the Court of Appeals affirmed the judgment of the Office of the President.

Petitioner filed a motion for reconsideration, but it was denied in the November 9, 2004 Resolution of the appellate court.

Hence, the instant petition.

The core issue before us is whether the flooding in the Meritville has been caused by petitioner's negligence.

Article 1170 of the Civil Code provides:

> 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.

In Philippine National Construction Corporation v. Court of Appeals,[3] we defined negligence as "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would do." It is the failure to observe that degree of care, precaution and vigilance that the circumstances just demand, whereby that other person suffers injury.[4] In Bank of the Philippine Islands v. Casa Montessori Internationale,[5] we reiterated the rule that negligence is never presumed but must be proven by whoever alleges it. In determining whether or not a party acted negligently, the constant test is: "Did the defendant in doing the negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence."[6]

In light of the foregoing principles, we hold that negligence cannot be attributed to petitioner.

First, it is not disputed that the Meritville is the first subdivision to be developed in the locality and that subsequent developments elevated the surrounding areas to a level higher by more than one meter than that of Meritville. Naturally, the water from these surrounding areas would flow to the lower area which is Meritville. It has to be emphasized that prior to these developments, there was no flooding in the subdivision.

Second, we recall the finding of the Housing and Land Use Arbiter that the Naga River has remained heavily silted and undredged. Due to the heavy silting, the river could not take the volume of water flowing into it, thus causing the flooding of the area.

Is petitioner liable for its failure to address the silting problem of the Naga River? We do not think so. Article 502 of the Civil Code provides that rivers and their natural bed are of public dominion. As Naga River is a public property, hence, it is the government which should address the problem.

Petitioner contends that under Republic Act No. 7924,[7] it is the Metro Manila Development Authority (MMDA) which should shoulder the responsibility, invoking Section 3, which partly reads:

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> SEC. 3. Scope of MMDA Services. - Metro-wide services under the jurisdiction of the MMDA are those services which have metro-wide impact and transcend local political boundaries or entail huge expenditures such that it would not be viable for said services to be provided by the individual local government units (LGUs) comprising Metropolitan Manila. These services shall include:
>
> (a) Development planning which includes the preparation of medium and long-term development plans; the development, evaluation and packaging of projects; investments programming; and coordination and monitoring of plan, program and project implementation.
>
> x x x
>
> (d) Flood control and sewerage management, which include the formulation and implementation of policies, standards, programs and projects for an integrated flood control, drainage and sewerage system.
>
> x x x
>
> SEC. 5, provides in part:
>
> (a) Formulate, coordinate and regulate the implementation of medium and long-term plans and programs for the delivery of metro-wide services, land use and physical development within Metropolitan Manila, consistent with national development objectives and priorities.
>
> (b) Prepare, coordinate and regulate the implementation of medium-term investment programs for metro-wide services which shall indicate sources and uses of funds for priority programs and projects, and which shall include the packaging of projects and presentation to funding institutions; x x x
>
> (g) Perform other related functions required to achieve the objectives of the MMDA, including the undertaking of delivery of basic services to the local government units, when deemed necessary subject to prior coordination with and consent of the local government unit concerned.

In Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.,[8] this Court, speaking through then Associate Justice (now Chief Justice) Reynato S. Puno, defined "metro-wide services" as those "services which have metro-wide impact and transcend local political boundaries or entail huge expenditures such that it would not be viable for said services to be provided by the individual local government units comprising Metro Manila." These basic "metro-wide services" include: (1) development planning; (2) transport and traffic management; (3) solid waste disposal and management; (4) flood control and sewerage management; (5) urban renewal, zoning and land use planning, and shelter services; (6) health and sanitation, urban protection, and pollution control; and (7) public safety. The "powers of the MMDA are limited to the following acts: formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installation of a system, and administration." The Court then holds that the MMDA is a "development authority." In other words, the MMDA is "an agency created for the purpose of laying down policies and coordinating with the various national government agencies, people's organizations, non-governmental organizations, and the private sector for the efficient and expeditious delivery of basic services" in the Metropolitan Manila area. In Metropolitan Manila Development Authority v. Garin,[9] these pronouncements were reiterated. Petitioner, therefore, cannot seek relief from the MMDA as its services only involve laying down policies and coordination with other agencies relative to its primary functions.

What is pertinent to respondents' cause is Section 17 of the Local Government Code quoted as follows:

> SEC. 17. Basic Services and Facilities -
>
> (a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and

> responsibilities of national agencies and offices devolved to them pursuant to this Code. Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein.
>
> (b) Such basic services and facilities include, but are not limited to the following:
>
> For a Municipality:
>
> x x x
>
> (viii) Infrastructure facilities intended primarily to service the needs of the residents of the municipality and which are funded out of the municipal funds including but not limited to municipal roads and bridges; school buildings and other facilities for public elementary and secondary schools; clinics, health centers and other health facilities necessary to carry out health services; communal irrigation, small water impounding projects and other similar projects, fish ports; artesian wells, spring development, rainwater collectors and water supply systems; seawalls, dikes, drainage and sewerage; and flood control, traffic signals and road signs, and similar facilities.
>
> x x x
>
> 4) For A City:
>
> All the services and facilities of the municipality and province x x x

From the above provisions, it is the city government of Las Piñas City which has the duty to control the flood in Meritville Townhouse Subdivision.

WHEREFORE, we GRANT the petition. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 77799 are REVERSED.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

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[1] Rollo, pp. 42-48. Ponencia by Associate Justice Delilah Vidallon-Magtolis (retired) and concurred in by Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid.

[2] Id., p. 49.

[3] G.R. No. 159270, August 22, 2005, 467 SCRA 569.

[4] Smith Bell Dodwell Shipping Agency Corp. v. Borja, G.R. No. 143008, June 10, 2002, 383 SCRA 341, 348, citing Valenzuela v. Court of Appeals, 253 SCRA 303 (1996), Bulilan v. Commission on Audit, 300 SCRA 445 (1998), Jarco Marketing Corp. v. Court of Appeals, 321 SCRA 375 (1999).

[5] G.R. Nos. 149454 & 149507, May 28, 2004, 430 SCRA 261.

[6] United Coconut Planters Bank v. Ramos, G.R. No. 147800, November 11, 2003, 415 SCRA 596, 610, citing Evangelista v. People, 315 SCRA 525 (1999).

[7] An Act creating the Metropolitan Manila Development Authority, defining its powers and functions, providing funds therefor and for other purposes.

[8] G.R. No. 135962, March 27, 2000, 328 SCRA 836.

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[9] G.R. No. 130230, April 15, 2005, 456 SCRA 176.

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