

**JAIME S. PEREZ, BOTH IN HIS PERSONAL AND OFFICIAL CAPACITY
AS CHIEF, MARIKINA DEMOLITION OFFICE, PETITIONER, VS.
SPOUSES FORTUNITO L. MADRONA AND YOLANDA B. PANTE,
RESPONDENTS.**

G.R. No. 184478. March 21, 2012

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before this Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to set aside the March 31, 2008 Decision[1] and September 10, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV. No. 83675. The CA affirmed in toto the Decision[3] of the Regional Trial Court (RTC) of Marikina City, Branch 192 granting respondents' prayer for injunction against petitioner.

The antecedents follow:

Respondent-spouses Fortunito Madrona and Yolanda B. Pante are registered owners of a residential property located in Lot 22, Block 5, France Street corner Italy Street, Greenheights Subdivision, Phase II, Marikina City and covered by Transfer Certificate of Title No. 169365[4] of the Registry of Deeds of Marikina. In 1989, respondents built their house thereon and enclosed it with a concrete fence and steel gate.

In 1999, respondents received the following letter dated May 25, 1999 from petitioner Jaime S. Perez, Chief of the Marikina Demolition Office:

Owner Judge F.L. Madrona
Lot 22 B. 5 Phase II
Green Heights[, Concepcion,] Marikina City
G./ Gng. F.L. Madrona[:]

Ito po ay may kinalaman sa bahay/istruktura na inyong itinayo sa (naturang lugar), Marikina, Kalakhang Maynila.

Bakod umusli sa Bangketa

Ang naturang pagtatayo ng bahay/istruktura ay isang paglabag sa umiiral na batas/programa na ipatutupad ng Pamahalaang Bayan ng Marikina na nauukol sa:

[x] PD 1096

(National Building Code of the Philippines)

[] PD 772

(Anti-Squatting Law)

[x] Programa sa Kalinisan at Disiplina sa Bangketa

[] RA 7279

(Urban Development and Housing Act of 1992)

[] PD 296

(Encroachment on rivers, esteros, drainage channels and other waterways)

[x] RA 917 as amended by Section 23, PD. No. 17, DO No. 4

Series of 1987

(Illegally occupied/constructed improvements within the road right-of-way)

Dahil po dito, kayo ay binibigyan ng taning na Pitong (7) araw simula sa pagkatanggap ng sulat na ito para kusang alisin ang inyong istruktura. Ang hindi ninyo pagsunod sa ipinag-uutos na ito ay magbubunsod sa amin upang gumawa ng kaukulang hakbang na naa[ayon sa itinatadhana ng Batas.

Sa inyong kaalaman, panuntuan at pagtalima.

Lubos na gumagalang,

(Sgd.)

JAIME S. PEREZ

Tagapamahala

Marikina Demolition Office[5]

As response, respondent Madrona sent petitioner a three-page letter[6] dated June 8, 1999 stating that the May 25, 1999 letter (1) contained an accusation libelous in nature as it is condemning him and his property without due process; (2) has no basis and authority since there is no court order authorizing him to demolish their structure; (3) cited legal bases which do not expressly give petitioner authority to demolish; and (4) contained a false accusation since their fence did not in fact extend to the sidewalk.

On June 9, 1999, respondents received a letter[7] from petitioner requesting them to provide his office a copy of the relocation survey on the subject property. Respondents, however, did not oblige because it was as if petitioner was fishing evidence from them.

More than a year later or on February 28, 2001, petitioner sent another letter[8] with the same contents as the May 25, 1999 letter but this time giving respondents ten days from receipt thereof to remove the structure allegedly protruding to the sidewalk. This prompted respondents to file a complaint[9] for injunction before the Marikina City RTC on March 12, 2001.

In respondents' injunction complaint, they alleged that (1) petitioner's letters made it appear that their fence was encroaching on the sidewalk and directed them to remove it, otherwise he would take the corresponding action; (2) petitioner's threat of action would be damaging and adverse to respondents and appears real, earnest and imminent; (3) the removal of their fence, which would include the main gate, would certainly expose the premises and its occupants to intruders or third persons; (4) petitioner has no legal authority to demolish structures in private properties and the laws he cited in his letters do not give him any authority to do so; (5) respondents enjoy the legal presumption of rightful possession of every inch of their property; (6) if petitioner accuses them of erroneous possession, he should so prove only through the proper forum which is the courts; (7) their fence is beside the sidewalk and the land on which it stands has never been the subject of acquisition either by negotiation or expropriation from the government; (8) petitioner's intended act of demolition even in the guise of a road right

of way has no factual or legal basis since there is no existing infrastructure project of the national government or Marikina City government; and (9) petitioner's letter and his intended act of demolition are malicious, unfounded, meant only to harass respondents in gross violation of their rights and in excess and outside the scope of his authority, thereby rendering him accountable both in his personal and official capacity.

Respondents likewise sought the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction to enjoin petitioner and all persons acting under him from doing any act of demolition on their property and that after trial, the injunction be made permanent. They also prayed for moral and exemplary damages and attorney's fees.

On March 14, 2001, petitioner was served the corresponding summons.[10]

On March 16, 2001, the RTC issued a TRO against petitioner.[11]

On March 29, 2001, petitioner filed an Urgent Ex Parte Motion for Extension to File Answer[12] until April 13, 2001. It appears however that petitioner's counsel failed to file an Answer within the extended period requested. Thus, on motion[13] of respondents, petitioner was declared in default on July 13, 2001.[14]

On July 25, 2001, petitioner filed a Motion to Lift Order of Default (with Ex-Parte Motion to Admit Answer and Notice Entry of Appearance).[15] According to petitioner's new counsel, an answer was not filed due to the former counsel's voluminous work load as lone lawyer in the City Legal Office.

On December 10, 2001, the RTC issued an Order[16] denying the motion to lift the order of default. Aside from finding that the motion failed to include a notice of hearing, the RTC also held that the alleged cause of delay is not excusable as voluminous work load of the counsel cannot justify the disregard of court processes or failure to abide by the period fixed by the rules and since the delay consisted not only a few days but over a hundred and three days. Petitioner moved to reconsider the order but the same was denied by the RTC in its March 6, 2002 Order.[17]

Petitioner thereafter filed a petition for certiorari[18] before the CA assailing the default order. Thus, on April 18, 2002, the RTC issued an order suspending the proceedings of the injunction case "until such time when the Petition for Certiorari shall have been disposed of with finality." [19]

On August 20, 2002, the CA rendered a decision[20] dismissing the petition for certiorari for lack of merit. Petitioner moved to reconsider the appellate court's decision, but the motion was denied by Resolution[21] dated January 30, 2003.

On September 15, 2003, the RTC issued an Order[22] dismissing the injunction complaint without prejudice. It held that respondents "have not instituted any action before th[e] Court showing that they are still interested in further prosecuting th[e] case" and "[i]n accordance with Section 3, Rule 17 of the Rules of Court, the Court is constrained to dismiss the complaint for failure of [respondents] to prosecute their complaint for an unreasonable length of time." However, upon motion of respondents, the dismissal order was set aside and the complaint was reinstated by Order[23] dated December 3, 2003. The RTC agreed with the observation of respondents that it was the court which suspended the proceedings in the injunction case pending final disposition of the petition for certiorari before the CA, and when the RTC issued the dismissal order, there was yet no entry of judgment from the CA and so it cannot be said that the petition was already "disposed of with finality." Respondents were then allowed to present their evidence ex parte before the branch clerk of court.

On July 27, 2004, the RTC rendered a Decision[24] in favor of respondents. The fallo of the RTC decision reads:

WHEREFORE, Judgment is hereby rendered in favor of the plaintiffs. As prayed for, defendant Jaime S.

Perez, Chief of the Demolition Office of Marikina City, or any person acting for and in his behalf as well as the successors to his office, is permanently enjoined from performing any act which would tend to destroy or demolish the perimeter fence and steel gate of the plaintiffs' property situated at Lot 22, Block 5, France Street corner Italy Street, Phase II, Greenheights Subdivision, Concepcion, Marikina City.

Defendant is further ordered to pay the amount of Twenty Thousand (P20,000.00) Pesos as attorney's fees and Five Thousand (P5,000.00) Pesos for the costs of suit.[25]

The RTC held that respondents, being lawful owners of the subject property, are entitled to the peaceful and open possession of every inch of their property and petitioner's threat to demolish the concrete fence around their property is tantamount to a violation of their rights as property owners who are entitled to protection under the Constitution and laws. The RTC also ruled that there is no showing that respondents' fence is a nuisance per se and presents an immediate danger to the community's welfare, nor is there basis for petitioner's claim that the fence has encroached on the sidewalk as to justify its summary demolition.

Petitioner appealed the RTC decision to the CA. On March 31, 2008, the appellate court rendered the assailed decision affirming the RTC decision.

Hence this petition based on the following grounds:

I.

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN AFFIRMING THE ACTION OF THE LOWER COURT IN REINSTATING/REVIVING THE COMPLAINT FILED BY THE RESPONDENTS.

II.

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN AFFIRMING THE RULING OF THE LOWER COURT THAT THE RESPONDENTS ARE ENTITLED TO PERMANENT INJUNCTION, THEREBY RESTRAINING THE PETITIONER OR ANYONE ACTING FOR AND ON HIS BEHALF FROM CARRYING OUT THE THREATENED DEMOLITION OF THEIR PERIMETER FENCE AND STEEL GATE.

III.

THE COURT OF APPEALS COMMITTED A REVERSIBLE [ERROR] IN AFFIRMING THE RULING OF THE LOWER COURT ORDERING THE PETITIONER TO PAY THE RESPONDENTS THE AMOUNTS OF TWENTY THOUSAND PESOS (P20,000.00) AS ATTORNEY'S FEES AND FIVE THOUSAND PESOS (P5,000.00) AS COSTS OF SUIT.[26]

Essentially, the issues to be resolved in the instant case are: (1) Did the trial court err in reinstating the complaint of respondents? (2) Are the requisites for the issuance of a writ of injunction present? and (3) Is petitioner liable to pay attorney's fees and costs of suit?

Petitioner argues that there was express admission of negligence by respondents and therefore, reinstatement of their dismissed complaint was not justified.

We disagree.

A perusal of the respondents' motion for reconsideration[27] of the order of dismissal reveals that there was no admission of negligence by respondents, either express or implied. Respondents only contended that (1) they were under the impression that it would be the RTC which would issue the order to continue the proceedings once it considers that the petition before the CA had already been disposed of with finality, and (2) their counsel's records do not show that the CA had already issued an entry of judgment at the time the dismissal order was

issued. They also only stated that they followed up with the CA the issuance of the entry of judgment but they were just told to wait for its delivery by mail. Petitioner's imputation that respondents expressly admitted negligence is therefore clearly unfounded.

Additionally, as correctly found by both the RTC and the CA, it did not appear that respondent lost interest in prosecuting their case nor was their counsel negligent in handling it. Accordingly, there was no basis for the dismissal order and reinstatement of respondents' complaint was justified.

As to the propriety of the issuance of the writ of injunction, petitioner claims that the requisites therefor are not present in the instant case. Petitioner contends that service of a mere notice cannot be construed as an invasion of a right and only presupposes the giving of an opportunity to be heard before any action could be taken. He also claims that it is clear from the records of the case that respondents' concrete fence was constructed on a part of the sidewalk in gross violation of existing laws and ordinance and thus, they do not have absolute right over the same. According to petitioner, the encroachment is clearly apparent in the Sketch Plan of the government geodetic engineer as compared to the Location Plan attached to respondents' complaint. He likewise contends that the clearing of the sidewalks is an infrastructure project of the Marikina City Government and cannot be restrained by the courts as provided in Presidential Decree No. 1818.[28] Lastly, petitioner points out that the trial court should not have merely relied on the testimonies of respondents alleging that his men were already in the subdivision and destroying properties on other streets to prove that there was urgent necessity for the issuance of the writ.

We disagree.

For injunction to issue, two requisites must concur: first, there must be a right to be protected and second, the acts against which the injunction is to be directed are violative of said right.[29] Here, the two requisites are clearly present: there is a right to be protected, that is, respondents' right over their concrete fence which cannot be removed without due process; and the act, the summary demolition of the concrete fence, against which the injunction is directed, would violate said right.

If petitioner indeed found respondents' fence to have encroached on the sidewalk, his remedy is not to demolish the same summarily after respondents failed to heed his request to remove it. Instead, he should go to court and prove respondents' supposed violations in the construction of the concrete fence. Indeed, unless a thing is a nuisance per se, it may not be abated summarily without judicial intervention.[30] Our ruling in *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc.*, on the need for judicial intervention when the nuisance is not a nuisance per se, is well worth mentioning. In said case, we ruled:

Respondents can not seek cover under the general welfare clause authorizing the abatement of nuisances without judicial proceedings. That tenet applies to a nuisance per se, or one which affects the immediate safety of persons and property and may be summarily abated under the undefined law of necessity (*Monteverde v. Generoso*, 52 Phil. 123 [1982]). The storage of copra in the quonset building is a legitimate business. By its nature, it can not be said to be injurious to rights of property, of health or of comfort of the community. If it be a nuisance per accidens it may be so proven in a hearing conducted for that purpose. It is not per se a nuisance warranting its summary abatement without judicial intervention. [Underscoring supplied.]

In *Pampanga Bus Co., Inc. v. Municipality of Tarlac* where the appellant-municipality similarly argued that the terminal involved therein is a nuisance that may be abated by the Municipal Council via an ordinance, this Court held: "Suffice it to say that in the abatement of nuisances the provisions of the Civil Code (Articles 694-707) must be observed and followed. This appellant failed to do." [31]

Respondents' fence is not a nuisance per se. By its nature, it is not injurious to the health or comfort of the community. It was built primarily to secure the property of respondents and prevent intruders from entering it.

And as correctly pointed out by respondents, the sidewalk still exists. If petitioner believes that respondents' fence indeed encroaches on the sidewalk, it may be so proven in a hearing conducted for that purpose. Not being a nuisance per se, but at most a nuisance per accidens, its summary abatement without judicial intervention is unwarranted.

Regarding the third issue, petitioner argues that he was just performing his duties and as public officer, he is entitled to the presumption of regularity in the performance of his official functions. Unless there is clear proof that he acted beyond his authority or in evident malice or bad faith, he contends that he cannot be held liable for attorney's fees and costs of suit.

Respondents, for their part, counter that the presumption of regularity has been negated by the fact that despite their reply to the first notice, which put petitioner on notice that what he was doing was ultra vires, he still reiterated his earlier demand and threat of demolition. Having been warned by respondents that his acts were in fact violations of law, petitioner should have been more circumspect in his actions and should have pursued the proper remedies that were more in consonance with the dictates of due process. Respondents further pray for moral damages for the serious anxieties and sleepless nights they suffered and exemplary damages to serve as an example to other public officials that they should be more circumspect in the performance of their duties.

We agree with respondents.

As respondents were forced to file a case against petitioner to enjoin the impending demolition of their property, the award of attorney's fees and costs of suit is justified. Clearly, respondents wanted to settle the problem on their alleged encroachment without resorting to court processes when they replied by letter after receiving petitioner's first notice. Petitioner, however, instead of considering the points raised in respondents' reply-letter, required them to submit the relocation plan as if he wants respondents to prove that they are not encroaching on the sidewalk even if it was he who made the accusation of violation in the first place. And when he did not get the "proof" he was requiring from respondents, he again sent a notice with a threat of summary demolition. This gave respondents no other choice but to file an injunction complaint against petitioner to protect their rights.

With regard to respondents' claim for moral damages, this Court rules that they are entitled thereto in the amount of P10,000.00 pursuant to Article 2217[32] of the Civil Code. As testified to by respondents, they suffered anxiety and sleepless nights since they were worried what would happen to their children who were left by themselves in their Marikina residence while they were in Ormoc City if petitioner would make real his threat of demolition on their fence.

We likewise hold that respondents are entitled to exemplary damages in the amount of P5,000.00 to serve as an example to other public officials that they should be more circumspect in the performance of their duties.

WHEREFORE, the March 31, 2008 Decision and September 10, 2008 Resolution of the Court of Appeals in CA-G.R. CV. No. 83675 are AFFIRMED with MODIFICATION. Petitioner Jaime S. Perez, Chief of the Demolition Office of Marikina City is ORDERED to pay respondent Spouses Fortunito L. Madrona and Yolanda B. Pante moral damages in the amount of P10,000.00 and exemplary damages in the amount of P5,000.00.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe,[*] JJ., concur.

[*] Designated additional member per Special Order No. 1207 dated February 23, 2012.

[1] Rollo, pp. 10-19. Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas

Peralta and Enrico A. Lanzas concurring.

[2] Id. at 21. Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Magdangal M. De Leon concurring.

[3] Records, Folder I, pp. 222-232.

[4] Records, Folder II, p. 1.

[5] Id. at 4.

[6] Id. at 5-7.

[7] Id. at 11.

[8] Id. at 8.

[9] Records, Folder I, pp. 3-11.

[10] Id. at 17.

[11] Id. at 23-24.

[12] Id. at 43-44.

[13] Id. at 40-41.

[14] Id. at 46.

[15] Id. at 69-73.

[16] Id. at 81-82.

[17] Id. at 113.

[18] Id. at 122-137.

[19] Id. at 143.

[20] Id. at 149-157.

[21] Id. at 175-176.

[22] Id. at 178-179.

[23] Id. at 202-203.

[24] Id. at 222-232.

[25] Id. at 231-232.

[26] Rollo, p. 32.

[27] Records, Folder I, pp. 189-191.

[28] PROHIBITING COURTS FROM ISSUING RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS IN CASES INVOLVING INFRASTRUCTURE AND NATURAL RESOURCE DEVELOPMENT PROJECTS OF, AND PUBLIC UTILITIES OPERATED BY, THE GOVERNMENT. Issued on January 16, 1981.

[29] Philippine Economic Zone Authority v. Carantes, G.R. No. 181274, June 23, 2010, 621 SCRA 569, 578-579, citing City Government of Baguio City v. Masweng, G.R. No. 180206, February 4, 2009, 578 SCRA 88, 99.

[30] Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc., G.R. No. 148339, February 23, 2005, 452 SCRA 174, 191.

[31] Id., citing Estate of Gregoria Francisco v. Court of Appeals, G.R. No. 95279, July 25, 1991, 199 SCRA 595, 601 and Pampanga Bus Co., Inc. v. Municipality of Tarlac, No. L-15759, December 30, 1961, 3 SCRA 816, 827-828.

[32] ART. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

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