

**SIMEON FLORO, PETITIONER, VS. ORLANDO A. LLENADO
(DECEASED), SUBSTITUTED BY HIS WIFE WENIFREDA T. LLENADO,
IN HER OWN BEHALF AS ADMINISTRATRIX OF THE ESTATE OF
ORLANDO A. LLENADO...**

G.R. No. 75723. June 02, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

The instant petition for review on certiorari presents two (2) issues for resolution, namely: (1) whether or not a valid contract of easement of right of way exists when the owner of one estate voluntarily allows the owner of an adjacent estate passage through his property for a limited time, without compensation; and, (2) whether or not an owner/developer of a subdivision can demand a compulsory easement of right of way over the existing roads of an adjacent subdivision instead of developing his subdivision's proposed access road as provided in his duly approved subdivision plan.

Simeon Floro is the owner of a piece of land known as the Floro Park Subdivision situated in Barangay Saluysoy, Meycauayan, Bulacan.[1] The subdivision has its own egress and ingress to and from the MacArthur Highway by means of its Road Lot 4 and the PNR level crossing.

Orlando A. Llenado,[2] on the other hand, was the registered owner of two (2) parcels of land, with a total area of 34,573 sq. meters, more or less,[3] known as the Llenado Homes Subdivision ("Llenado Homes," for brevity). Prior to its purchase by Llenado from the owner Francisco de Castro, the land was known as the Emmanuel Homes Subdivision, a duly licensed and registered housing subdivision in the name of Soledad Ortega.[4] Bounded on the South by the 5 to 6 meter-wide Palanas Creek,[5] which separates it from the Floro Park Subdivision, and on the west by ricelands belonging to Marcial Ipapo, Montaos and Guevarra, the Llenado Homes does not have any existing road or passage to the MacArthur Highway. However, a proposed access road traversing the idle riceland of Marcial Ipapo has been specifically provided in the subdivision plan of the Emmanuel Homes Subdivision, which was duly approved by the defunct Human Settlement Regulatory Commission (now Housing and Land Use Regulatory Board).[6]

Sometime in February, 1983, the Llenados sought, and were granted, permission by the Floros to use Road Lots 4 and 5 of the Floro Park Subdivision as passageway to and from MacArthur Highway. On April 7, 1983, however, Floro barricaded Road Lot 5 with a pile of rocks, wooden posts and adobe stones, thereby preventing its use by the Llenados.

Their request for the reopening of Road Lot 5 having been denied, Orlando Llenado instituted on April 13, 1983, a complaint before the Regional Trial Court (RTC) of Malolos, Bulacan, against Simeon Floro for Easement of Right of Way with Prayer for the Issuance of a Writ of Preliminary Mandatory Injunction and Damages. The complaint was docketed as Civil Case No. 6834-M and raffled off to Branch XIX, presided over by Hon. Judge Camilo Montesa.

After hearing and ocular inspection, the trial court, in an Order dated July 15, 1983,[7] granted the prayer for the issuance of a writ of preliminary mandatory injunction upon the filing of a bond by Llenado in the amount of one hundred thousand pesos (P100,000.00). Floro was ordered:

"1. To open the road by removing the rocks and wooden posts and/or to remove the barricade on the subject road of the Floro Park Subdivision and enjoining him and any person or persons under him from doing or performing any act or acts which will prevent (LLENADO) or his agents or any person acting under (LLENADO's) instructions from passing through the subject subdivision road to get into and to get out of the aforementioned properties of (LLENADO) until further order from this Court."

Floro moved for reconsideration but was denied the relief sought.[8] He then filed with the Court of Appeals a petition for certiorari and prohibition with petition for a writ of preliminary injunction and restraining order, but later on, moved to withdraw his petition. His motion for withdrawal was granted by the appellate court in its Resolution dated March 30, 1984 which declared the case closed and terminated.[9]

In the meantime, Orlando Llenado died and was substituted by his wife Wenifreda T. Llenado as administratrix of his estate and as legal guardian of their four (4) minor children.[10] Trial on the merits of the case which was suspended pending resolution of the petition before the Court of Appeals, resumed.

On October 16, 1984, the trial court rendered judgment dismissing the case and lifting the writ of preliminary mandatory injunction previously issued. The dispositive portion of the decision[11] reads:

"WHEREFORE, judgment is hereby rendered dismissing the instant complaint for lack of merit, and the writ of preliminary mandatory injunction issued in favor of the plaintiff is hereby ordered dissolved and/or lifted. On the counterclaim posed by defendant, the plaintiff is hereby ordered to pay defendant the following amounts:

- a. P30,000.00 as actual damages suffered by defendant;
- b. P77,500.00 as compensation for the use of defendant's property;
- c. P15,000.00 as attorney's fees; and,
- d. To pay the costs of the suit.

SO ORDERED."

On appeal by Llenado, the appellate court set aside the decision of the trial court in a decision[12] promulgated on February 11, 1986, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the decision appealed from is hereby SET ASIDE and another one entered:

- (1) Granting the establishment of a legal or compulsory easement of right of way passing through Road Lots 4 and 5 of defendant's Floro Park Subdivision in favor of plaintiff's Llenado Homes Subdivision;
- (2) Ordering defendant to remove immediately all of the obstructions, such as walls, rocks and posts with which he had barricaded Road Lot 5 for the purpose of preventing plaintiff from using defendant's subdivision as passage way to the MacArthur Highway;
- (3) Ordering defendant to pay to plaintiff, upon finality of this decision, the following:
 - (a) P 60,000.00 — temperate or moderate damages
 - (b) P100,000.00 — moral damages; and

(c) P 30,000.00 — attorney's fees;

(4) Ordering plaintiff to pay to defendant the amount of P60,000.00 within ten (10) days from the date of finality of this decision as indemnity for the right of way pursuant to the mandate of Article 649 of the Civil Code; and

(5) Ordering defendant to pay the costs.

The liability of the defendant under No. (3) (supra) shall be legally compensated by the liability of the plaintiff under No. (4) (supra) automatically to the extent that the amount of one is covered by the amount of the other.

SO ORDERED."

On August 14, 1986, the appellate court in separate resolutions denied Floro's motion for reconsideration and supplementary motion^[13] and granted Llenado's motion for partial execution pending appeal.^[14] The latter resolution provided in its dispositive portion, thus:

"WHEREFORE, upon the posting by plaintiff-appellant of a bond in the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) approved by this Court, let a writ of partial execution pending appeal be issued ordering the defendant-appellee to remove immediately all of the obstructions, including all walls, rocks, posts, and other materials with which he has barricaded Road Lot 5, for the purpose of preventing plaintiff-appellant from using defendant's subdivision as passage way to the MacArthur Highway. Said Order shall include Road Lot 4 so that plaintiff-appellant will have free access to MacArthur Highway.

SO ORDERED."

The writ of partial execution pending appeal was issued on October 2, 1986 after the instant Petition had been filed and after the Court had resolved on September 15, 1986 to require Llenado to comment thereon. On motion of Floro, the Court issued a restraining order on October 29, 1986,^[15] enjoining the appellate court from carrying out its writ of partial execution pending appeal. Subsequently, the instant petition was given due course.^[16]

In a petition to review a decision of the Court of Appeals under Rule 45 of the Rules of Court, the jurisdiction of the Court is ordinarily confined to reviewing errors of law committed by the Court of Appeals, its findings of fact being conclusive on the Court.^[17] There are, however, exceptional circumstances that would compel the Court to review the findings of fact of the Court of Appeals, summarized in *Remalante v. Tibe*^[18] and subsequent cases^[19] as follows: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals in making its findings went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and, (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

The findings and conclusions of the Court of Appeals, being contrary to the findings and conclusions of the trial court, the instant case falls within the exception. Thus, the Court may scrutinize the evidence on the record to bring to light the real facts of the case.^[20]

It is not disputed that sometime in February 1983, Floro granted the Llenados verbal permission to pass through the Floro Park Subdivision in going to and from the MacArthur Highway. Whether such permission, as claimed

by Floro, was for the month of March only, without compensation and as a neighborly gesture for the purpose merely of enabling the Llenados to install stone monuments (mojones) on their land,[21] or was in relation to the easement of right of way granted in their favor, as insisted by the Llenados,[22] the fact remains that no such contract of easement of right of way was actually perfected between Floro and Llenado. Both Orlando[23] and Wenifreda Llenado[24] testified that the conditions of the easement of right of way were still to be drawn up by Floro's lawyer. Thus, no compensation was agreed upon, and none was paid, for the passage through Floro's property during the month of March.[25]

However, when Wenifreda saw Floro in the evening of April 7, 1983 to negotiate for the reopening of Road Lot 5 and Floro laid down his conditions[26] for the requested reopening and presumably for the requested easement of right of way, Orlando rejected said conditions for being onerous.[27]

In *Dionisio v. Ortiz*,[28] where therein private respondents claimed to have every right to use Howmart Road as passageway to EDSA by reason of a standing oral contract of easement of right of way with therein petitioner, so that the latter did not have the right to put a barricade in front of private respondents' gate and to stop them from using said gate as passageway to Howmart Road, the Court said:

"There is no question that a right of way was granted in favor of the private respondents over Howmart Road but the records disclose that such right of way expired in December 1988. The continued use of the easement enjoyed by QCIEA including the private respondents is by the mere tolerance of the owner pending the renegotiation of the terms and conditions of said right of way. x x x Absent an agreement of the parties as to the consideration, among others, no contract of easement of right of way has been validly entered into by the petitioners and QCIEA. Thus the private respondents' claim of an easement of right of way over Howmart Road has no legal or factual basis."

As in the *Dionisio* case, the use of Road Lots 4 and 5 by the Llenados during the month of March was by mere tolerance of Floro pending the negotiation of the terms and conditions of the right of way. This is evident from the testimony of Wenifreda that "they said to us to go on while they are preparing for the papers" and that "We can use that for a while, while they were making for the papers." [29] Although such use was in anticipation of a voluntary easement of right of way, no such contract was validly entered into by reason of the failure of the parties to agree on its terms and conditions. Thus, private respondents Llenados cannot claim entitlement to a right of way through the Floro Park Subdivision on the basis of a voluntary easement.

Having ruled that no voluntary easement of right of way had been established in favor of private respondents Llenados, we now determine whether or not they are entitled to a compulsory easement of right of way.

For the Llenados to be entitled to a compulsory servitude of right of way under the Civil Code, the preconditions provided under Articles 649 and 650 thereof must be established. These preconditions are: (1) that the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway (Art. 649, par. 1); (2) after payment of proper indemnity (Art. 649, par. 1); (3) that the isolation was not due to acts of the proprietor of the dominant estate (Art. 649, last par.); and, (4) that the right of way claimed is at the point least prejudicial to the servient estate; and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest (Art. 650).[30]

The burden of proving the existence of the prerequisites to validly claim a compulsory right of way lies on the owner of the dominant estate.[31] We find that private respondents have failed in this regard.

Significantly, when Orlando Llenado filed the complaint for legal easement under Articles 649 and 650 of the Civil Code, he focused his argument on the absence of any road, other than the closed road of the Floro Park Subdivision, as his means of ingress and egress to and from his property. However, he omitted to state that there

is a proposed access road through the Ipapo property.

Danilo Ravello, an engineer employed as Project Officer of the Human Settlement Regulatory Commission (HSRC) since 1981, testified that his duties consisted in evaluating and processing subdivision plans and making the proper recommendation for their approval or disapproval. The application of Soledad Ortega for the Emmanuel Homes Subdivision,[32] appearing on page 120 of the records of the HSRC, had the following attachments: (1) Sketch Plan of the property containing an area of 34,973 sq. m.;[33] (2) Waterline Layout Plan;[34] (3) Vicinity Plan;[35] (4) Road Plan Layout;[36] and (5) Consolidation Subdivision Plan.[37] According to Ravello, as per Plans Exhs. "10-A" and "10-C", Road Lot 3 of the Emmanuel Homes Subdivision starts and ends with adjacent properties; on one end, the property owned by Mariano Monadero and at the other, the property owned by a certain Ventura Tan Mariano. As per Plans, the access road to the subdivision should have come from the MacArthur Highway through the Ipapo property.[38] Having found on ocular inspection that the access road indicated in the Plan did not actually exist, the HSRC required applicant Soledad Ortega to submit a written right of way clearance from Ipapo, which she did and on the basis of which, her application on behalf of the Emmanuel Homes Subdivision was approved.[39]

When Orlando Llenado acquired the subject property, he adopted the subdivision plans of Emmanuel Homes and renamed it as the Llenado Homes Subdivision. Accordingly, he applied for the issuance of a new Development Permit and License to Sell in his name as the new owner of the subdivision. Subsequently, the corresponding license to sell and development permit were issued. As shown by the Consolidation Subdivision Plan[40] submitted by Orlando Llenado, the names Soledad Ortega/Emmanuel Homes Subdivision were merely crossed out and, in lieu thereof, the names Orlando Llenado/Llenado Homes Subdivision were written. In said subdivision plan which was duly approved by the HSRC, the Ipapo Access Road was retained.

On July 1, 1983, during the pendency of Civil Case No. 6834-M, Orlando Llenado filed with the HSRC an application for the amendment of the original Consolidation Subdivision Plan of the Llenado Homes Subdivision.[41] The proposed amendments, as indicated in Exh. "11-A",[42] were: (1) the conversion of Lot 14 of Block 6 into a road lot, designed to connect with Road Lot 5 of the Floro Homes Subdivision; and, (2) the closing of both ends of Road Lot 3, the portion leading to the Ventura Tan Mariano property and the portion leading to the Ipapo right of way (Adriano Monadero property), to be converted into saleable residential lots. The first proposed alteration, the conversion of Lot 14, Block 6 into a road lot was approved on March 20, 1984.[43] The access road of the Llenado Homes Subdivision, however, remained in the Subdivision Plan to be through the Ipapo property, as approved by the HSRC.

When asked by the court as to the policy of the HSRC regarding the approval of a subdivision plan in connection with the right of way issue, Engr. Ravello responded that as a prerequisite for approval, the subdivision must have an access road. It was not necessary that the access road be a paved road. A dirt road was sufficient provided that the owner of the lot used as access road gives his consent and the owner/developer/applicant of the proposed subdivision develops the proposed access road,[44] as approved by the HSRC in compliance with Section 29 of Presidential Decree No. 957 which states:

"SEC. 29. Right of Way to Public Road. - The owner or developer of a subdivision without access to any existing public road or street must secure a right of way to a public road or street and such right of way must be developed and maintained according to the requirement of the government authorities concerned."

On appeal to the Court of Appeals, private respondents Llenado submitted a letter of Marcial Ipapo dated July 3, 1985 addressed to the HSRC,[45] informing the latter that he did not give a road right of way over his property in favor of Soledad Ortega, the developer of Emmanuel Homes Subdivision. This letter seems to be an aftermath of the testimony of Engr. Ravello that the notarized affidavit of Ipapo submitted by Soledad Ortega to the HSRC

could not be located in the records of the Commission.[46] This new matter, however, is inadmissible in evidence, not having been authenticated in accordance with Section 20, Rule 132 of the Rules of Court. It was, therefore, erroneous on the part of the Court of Appeals to consider this piece of evidence in its Resolution For The Motion For Reconsideration dated August 14, 1986.[47]

There being an existing right of way over the Ipapo property, the first requirement for a grant of a compulsory easement of right of way over the Floro Park Subdivision has not been met.

In *Talisay-Silay Milling Co. v. Court of First Instance of Negros Occidental*,[48] the Court explained what is meant by payment or prepayment of the required indemnity under Article 649 of the Civil Code, as follows:

"x x x Prepayment, as we used the term means the delivery of the proper indemnity required by law for the damage that might be incurred by the servient estate in the event the legal easement is constituted. The fact that a voluntary agreement upon the extent of compensation cannot be reached by the parties involved, is not an impediment to the establishment of such easement. Precisely, the action of the dominant estate against the servient estate should include a prayer for the fixing of the amount which may be due from the former to the latter."

In the case at bench, no proof was presented by private respondent Llenado that he complied with this requirement. The complaint for easement of right of way filed by him in the lower court did not contain a prayer for the fixing of the amount that he must pay Floro in the event that the easement of right of way be constituted. Thus, the existence of the second requisite has likewise not been established.

There can be no denying that the isolation of the Llenado Homes Subdivision is the doing of its owner/developer/applicant. It appears that the access road indicated in the Plan of the Emmanuel Homes Subdivision and the Llenado Homes Subdivision for which a right of way over the Ipapo property was procured, was merely for the sake of securing an approval of the proposed development plan. There were no proofs of actual work having been done to construct a road, even just a dirt road, over the right of way that would connect Road Lot 3 of the Llenado Homes Subdivision to the MacArthur Highway. Private respondent Llenado admitted that the Ipapo riceland was no longer being cultivated and there was already a fence made of adobe wall constructed on it.[49] Indications are that it has already been abandoned as a ricefield. There was no reason for private respondent's failure to develop the right of way except the inconvenience and expenses it would cost him. Hence, the third requisite has not been met.

If the servitude requested by private respondent Llenado is allowed, other subdivision developers/owners would be encouraged to hastily prepare a subdivision plan with fictitious provisions for access roads merely for registration purposes. Thereafter, said developers could abandon their duly approved plans and, for whatever reason, open up another way through another property under the pretext that they have inadequate outlets to a public road or highway. Furthermore, if such practice were tolerated, the very purpose for which Presidential Decree No. 957 was enacted, that is, to protect subdivision buyers from unscrupulous subdivision owners/developers who renege on their duties to develop their subdivisions in accordance with the duly approved subdivision plans, would be defeated.

The Court takes cognizance of the fact that, instead of developing the proposed access road, private respondent Llenado applied for the conversion of Lot 14 of Block 6 into a road lot to connect it with Road Lot 5 of the Floro Park Subdivision, citing as reason therefor, that the amendment sought would create a "more adequate and practical passage" from the Llenado Homes Subdivision to the MacArthur National Highway and vice-versa. The "convenience" of using Road Lots 4 and 5 of the Floro Park Subdivision will not suffice, however, to justify the easement in favor of private respondent.

In order to justify the imposition of the servitude of right of way, there must be a real, not a fictitious or artificial necessity for it. Mere convenience for the dominant estate is not what is required by law as the basis for setting up a compulsory easement. Even in the face of a necessity, if it can be satisfied without imposing the servitude, the same should not be imposed.[50] This easement can also be established for the benefit of a tenement with an inadequate outlet, but not when the outlet is merely inconvenient. Thus, when a person has already established an easement of this nature in favor of his tenement, he cannot demand another, even if the first passage has defects which make passage impossible, if those defects can be eliminated by proper repairs.[51]

In the case of *Ramos v. Gatchalian*,[52] the Court denied access to Sucat Road through Gatchalian Avenue in view of the fact that petitioner had a road right of way provided by the *Sobrina Rodriguez Lombos Subdivision* indicated as Lot 4133-G-12 in its subdivision plan for the buyers of its lots, notwithstanding that said lot was still undeveloped and inconvenient to petitioner. Even if Ramos, the petitioner therein, had "to pass through other lots belonging to other owners, which are grassy and cogonal, as temporary ingress/egress with great inconvenience particularly due to flood and mud," the Court did not allow the easement because it would run counter to existing jurisprudence that mere convenience for the dominant estate does not suffice to serve as basis for the servitude. This ruling was reiterated in *Rivera v. Intermediate Appellate Court*[53] and *Costabella Corporation v. Court of Appeals*. [54]

As borne out by the records of this case, despite the closure of the subject road, construction work at *Llenado Homes Subdivision* continued. The alternative route taken by private respondent is admittedly inconvenient because he has to traverse several ricelands and rice paddies belonging to different persons, not to mention that said passage, as found by the trial court, is impassable during the rainy season. However, private respondent has no one to blame but himself for not developing the proposed access road through the *Ipapo property*.

Worthy of mention is the trial court's reason[55] for the denial of the easement of right of way, thus:

"x x x While it is true that the conversion of said salable (sic) Lot 14, Block 6 into a Road Lot has been approved by the Human Settlement Regulatory Commission, such approval, however, does not ipso facto connect Road Lot 5 and 4 (Exh. C-1) of the *Floro Park Subdivision* in the absence of consent and/or approval of the owner of said *Floro Park Subdivision*. x x x It should be emphasized that the end of Road Lot 3 of *Llenado Homes Subdivision* facing the *MacArthur Highway* as per approved subdivision plan, subject of the proposed amendment, has been designated/specified as an access road directly leading to the *MacArthur Highway*. It is the shortest route and the road alignment is direct and in a straight line perpendicular to the *MacArthur Highway*. The disapproval, therefore, of the closure and consequent conversion of both ends of Road Lot 3 into residential lots, in effect, maintains Road Lot 3 as an access road of *Llenado Homes Subdivision* to the main highway. There appears a semblance of deception if the provision for (the) proposed access road in the approved subdivision plan of *Emmanuel Homes Subdivision*, now *Llenado Homes Subdivision*, would not be implemented as it would appear that the same was indicated in the plans merely for purposes of approval of the subdivision but not actually to develop and avail of the same was originally intended."

It is also worthwhile to observe that on November 29, 1985, the then Minister of Public Works and Highways found the construction of the concrete culvert across *Palanas Creek* illegal in contemplation of Presidential Decree No. 296, Letters of Instructions No. 19 and Presidential Decree No. 1067 and ordered private respondent herein to remove or demolish the same, to be carried out by the Chief Civil Engineer, *Bulacan Engineering District*, at the expense of private respondent.[56]

Failing to establish the existence of the prerequisites under Articles 649 and 650 of the Civil Code, private respondent *Llenado's* bid for a compulsory easement of right of way over Road Lots 4 and 5 of the *Floro Park Subdivision* must fail.

It appears from the records that during the period from March 1983 until the closure of the subject roads on April 7, 1983, private respondent was allowed to pass thru petitioner's subdivision without any agreement on compensation. During the same period, the subject roads (Road Lots 4 and 5) were damaged due to the trucks and heavy equipment passing thereon. Justice and equity demand that petitioner be compensated for the said damage. Hence, the lower court's decision awarding to petitioner Thirty Thousand Pesos (P30,000.00) as actual and compensatory damages should be affirmed.

Petitioner should likewise be indemnified for the use of his property from July 15, 1983 (upon the reopening of the subject road pursuant to the issuance of a writ of preliminary mandatory injunction) until October 16, 1986 (when the writ was lifted). In the absence of a specific provision applicable in the case at bench as to the amount of proper indemnity, the award of Sixty Thousand Pesos (P60,000.00) as temperate or moderate damages pursuant to Articles 2224 and 2225 of the Civil Code[57] is considered proper and reasonable.[58]

As regards the claim for attorney's fees, considering that the petitioner was compelled to file a petition for review on certiorari before this Court, the amount of Thirty Thousand Pesos (P30,000.00) is just and reasonable.

WHEREFORE, the appealed decision of the Court of Appeals is SET ASIDE and the decision of the trial court, as herein modified, is REINSTATED. Costs against private respondent.

SO ORDERED.

Feliciano, (Chairman), Melo, Vitug, and Francisco, JJ., concur.

[1] Exh. "7", Exhibits for the Defendant, p. 3; Records, p. 11.

[2] Orlando A. Llenado died intestate on November 7, 1983 and was substituted in the instant case by his wife WENIFREDA LLENADO as Administratrix of the Estate of Orlando Llenado and as Legal Guardian of their four (4) minor children. (Order dated January 23, 1984 in Sp. Proc. No. 201-V-83, Original Records, p. 255)

[3] Exhs. "A" and "B", Exhibits for the Plaintiff, pp. 1-2; 5-6.

[4] Exh. "13", Exhibits for the Defendant, p. 19; Exh. "M", Original Records, p. 371.

[5] TSN, May 16, 1983, p. 4.

[6] See Exhibit 11, Consolidated Subdivision Plan, Defendant's Folder of Exhibits, p. 11.

[7] Records, pp. 90-92.

[8] Order dated August 12, 1983, Records, pp. 108-109.

[9] Records, pp. 312-314.

[10] The Llenados have four (4) children, namely: Maria Gracia, Maria Dexina, Avelino and Antonio, but only three of them were named in the petition. Maria Gracia was omitted.

[11] Records, p. 459.

[12] Penned by the late Associate Justice Desiderio P. Jurado, and concurred in by Associate Justices Crisolito Pascual, Jose C. Campos, Jr., and Serafin E. Camilon, Rollo, pp. 32-55.

[13] Rollo, pp. 58-63.

[14] Rollo, pp. 65-71, Associate Justice Camilon dissented.

[15] Rollo, p. 122.

[16] Resolution of August 10, 1988, Rollo, p. 149.

[17] Lighter Transportation, Inc. v. Court of Appeals, G.R. No. 50373, February 15, 1990, 182 SCRA 251, 255; Co Kiat v. Court of Appeals, G.R. No. 48700, July 2, 1990, 187 SCRA 5, 11; Ordonio v. Court of Appeals, G.R. No. 91721, July 31, 1991, 199 SCRA 873, 878; Caina v. People, G.R. No. 78777, September 2, 1992, 213 SCRA 309, 314.

[18] G.R. No. 59514, February 25, 1988, 158 SCRA 138, 145.

[19] Banaag v. Bartolome, G.R. No. 76245, December 20, 1991, 204 SCRA 924, 940; Tongson v. Court of Appeals, G.R. No. 77104, November 6, 1992, 215 SCRA 426, 431-432; Geronimo v. Court of Appeals, G.R. No. 105540, July 3, 1993, 224 SCRA 494, 498.

[20] Quality Tobacco Corporation v. Intermediate Appellate Court, G.R. No. 65005, July 5, 1990, 187 SCRA 210, 213; Valenzuela v. Court of Appeals, G.R. No. 83122, October 19, 1990, 191 SCRA 1, 10; Shauf v. Court of Appeals, G.R. No. 90314, November 27, 1990, 191 SCRA 713, 732; Gurango v. Intermediate Appellate Court, G.R. No. 75290, November 4, 1992, 215 SCRA 332, 337.

[21] TSN, May 16, 1983, pp. 4-5; 21; May 10, 1984, pp. 28-31.

[22] TSN, April 21, 1983, pp. 6-7; May 9, 1983, p. 14.

[23] TSN, April 29, 1983, pp. 16-17.

[24] TSN, May 9, 1983, p. 14.

[25] TSN, April 29, 1983, pp. 14, 17.

[26] According to Wenifreda Llenado, but denied by FLORO, the conditions imposed by the latter were: (1) Llenado should provide a 24-hour security at the crossing of Floro Park Subdivision; (2) Floro Park Subdivision roads (macadam roads or dirt roads) should be cemented at Llenado's expense; (3) Ornamental plants should be planted along the sidewalks of Floro Park Subdivision; (4) Electric bills for the street lights of Floro Park Subdivision would be shouldered by Llenado; and (5) Llenado would construct a bridge across the Palanas Creek which is situated between Llenado Homes and Floro Park Subdivision.

[27] TSN, May 9, 1983, p. 16.

[28] G.R. No. 95738, December 10, 1991, 204 SCRA 745, 749.

[29] TSN, May 9, 1983, pp. 14 and 17.

[30] Bacolod-Murcia Milling Co. v. Capitol Subdivision, Inc., G.R. No. L-25887, July 26, 1966, 17 SCRA 735; Angela Estate, Inc. v. CFI of Negros Occidental, G.R. No. L-27084, July 31, 1968, 24 SCRA 500, 510; Talisay-Silay Milling Co., Inc. v. CFI of Negros Occidental, G.R. No. 33423, December 22, 1971, 42 SCRA 577, 582; Francisco v. Intermediate Appellate Court, G.R. No. 63996, September 15, 1989, 177 SCRA 527; 533; Costabella Corporation v. Court of Appeals, G.R. No. 80511, January 25, 1991, 193 SCRA 333, 339.

[31] Costabella Corporation v. Court of Appeals, *Ibid.*, p. 340.

[32] Exh. "9", Exhibits for the Defendant, p. 10.

- [33] Exh. "10", Ibid., p. 11.
- [34] Exh. "10-A", Ibid., p. 12.
- [35] Exh. "10-B", Ibid., p. 13.
- [36] Exh. "10-C", Ibid., p. 15.
- [37] Exh. "10-D", Ibid., p. 14.
- [38] Exhs. "10-E" and "10-B-1", Ibid., pp. 11 & 13.
- [39] TSN, April 3, 1984, pp. 4-45, 71; April 12, 1984, pp. 13-14.
- [40] Exhibits "11" and "11-A", Defendant's Folder of Exhibits, pp. 16 and 17.
- [41] Exh. "K", Records, pp. 357-358.
- [42] Exhibits for the Defendant, p. 17.
- [43] Exh. "J", Records, p. 355.
- [44] TSN, April 12, 1984, pp. 41-44.
- [45] Rollo, p. 106.
- [46] TSN, April 3, 1984, pp. 41-42; April 12, 1984, p. 44.
- [47] Rollo, pp. 58-59.
- [48] Supra, p. 584.
- [49] TSN, April 29, 1983, pp. 3-4.
- [50] Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Vol. II, 1992 ed., pp. 387-388.
- [51] Ibid., p. 388.
- [52] G.R. No. 75905, October 12, 1987, 154 SCRA 703.
- [53] G.R. NO. 74249, January 20, 1989, 169 SCRA 307, 313.
- [54] Supra., p. 341.
- [55] Original Records, pp. 455-458.
- [56] Rollo, p. 72.
- [57] Article 2224 provides:
- "ART. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty."
- Article 2225 provides:
- "ART. 2225. Temperate damages must be reasonable under the circumstances."
- [58] See CA Decision, Original Records, pp. 13-14.

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