

SECOND DIVISION

[G.R. No. 173252, July 17, 2009]

**UNISOURCE COMMERCIAL AND DEVELOPMENT CORPORATION,
PETITIONER, VS. JOSEPH CHUNG, KIAT CHUNG AND KLETO
CHUNG, RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

The instant petition assails the Decision^[1] dated October 27, 2005 and the Resolution^[2] dated June 19, 2006 of the Court of Appeals in CA-G.R. CV No. 76213. The appellate court had reversed and set aside the Decision^[3] dated August 19, 2002 of the Regional Trial Court of Manila, Branch 49, in Civil Case No. 00-97526.

The antecedent facts are as follows:

Petitioner Unisource Commercial and Development Corporation is the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. 176253^[4] of the Register of Deeds of Manila. The title contains a memorandum of encumbrance of a voluntary easement which has been carried over from the Original Certificate of Title of Encarnacion S. Sandico. The certified English translation^[5] of the annotation reads:

By order dated 08 October 1924 of the Court of First Instance of Manila, Chamber IV (AP-7571/T-23046), it is declared that Francisco Hidalgo y Magnifico has the right to open doors in the course of his lot described as Lot No. 2, Block 2650 of the map that has been exhibited, towards the left of the Callejon that is used as a passage and that appears as adjacent to the said Lot 2 and to pass through the land of Encarnacion Sandico y Santana, until the bank of the estero that goes to the Pasig River, and towards the right of the other Callejon that is situated between the said Lot 2 and Lot 4 of the same Block N.^[6]

As Sandico's property was transferred to several owners, the memorandum of encumbrance of a voluntary easement in favor of Francisco M. Hidalgo was consistently annotated at the back of every title covering Sandico's property until TCT No. 176253 was issued in petitioner's favor. On the other hand, Hidalgo's property was eventually transferred to respondents Joseph Chung, Kiat Chung and Cleto Chung under TCT No. 121488.^[7]

On May 26, 2000, petitioner filed a Petition to Cancel the Encumbrance of Voluntary Easement of Right of Way^[8] on the ground that the dominant estate has an

adequate access to a public road which is Matienza Street. The trial court dismissed the petition on the ground that it is a land registration case. Petitioner moved for reconsideration. Thereafter, the trial court conducted an ocular inspection of the property. In an Order^[9] dated November 24, 2000, the trial court granted the motion and made the following observations:

1. The dominant estate is a property enclosed with a concrete fence with no less than three (3) doors in it, opening to an alley belonging to the servient estate owned by the petitioner. The alley is leading to Matienza St.;
2. The dominant estate has a house built thereon and said house has a very wide door accessible to Matienza St. without any obstruction. Said street is perpendicular to J.P. Laurel St.

It is therefore found that the dominant estate has an egress to Matienza St. and does not have to use the servient estate.^[10]

In their Answer,^[11] respondents countered that the extinguishment of the easement will be of great prejudice to the locality and that petitioner is guilty of laches since it took petitioner 15 years from acquisition of the property to file the petition.

In a Decision dated August 19, 2002, the trial court ordered the cancellation of the encumbrance of voluntary easement of right of way in favor of the dominant estate owned by respondents. It found that the dominant estate has no more use for the easement since it has another adequate outlet to a public road which is Matienza Street. The dispositive portion of the decision reads:

IN VIEW OF ALL THE FOREGOING, the Court hereby orders the cancellation of the Memorandum of Encumbrance annotated in TCT No. 176253 which granted a right of way in favor of the person named therein and, upon the finality of this decision, the Register of Deeds of the City of Manila is hereby directed to cancel said encumbrance.

With respect to the other prayers in the petition, considering that the same are mere incidents to the exercise by the owners of right of their ownership which they could well do without the Court's intervention, this Court sees no need to specifically rule thereon. The Court cannot award plaintiff's claims for damages and attorney's fees for lack of sufficient bases therefor.

SO ORDERED.^[12]

Respondents appealed to the Court of Appeals. On October 27, 2005, the appellate court reversed the decision of the trial court and dismissed the petition to cancel the encumbrance of voluntary easement of right of way.

The appellate court ruled that when petitioner's petition was initially dismissed by

the executive judge, the copy of the petition and the summons had not yet been served on respondents. Thus, when petitioner moved to reconsider the order of dismissal, there was no need for a notice of hearing and proof of service upon respondents since the trial court has not yet acquired jurisdiction over them. The trial court acquired jurisdiction over the case and over respondents only after the summons was served upon them and they were later given ample opportunity to present their evidence.

The appellate court also held that the trial court erred in canceling the encumbrance of voluntary easement of right of way. The appellate court ruled that Article 631(3) [13] of the Civil Code, which was cited by the trial court, is inapplicable since the presence of an adequate outlet to a highway extinguishes only legal or compulsory easements but not voluntary easements like in the instant case. There having been an agreement between the original parties for the provision of an easement of right of way in favor of the dominant estate, the same can be extinguished only by mutual agreement or by renunciation of the owner of the dominant estate.

The decretal portion of the decision reads:

WHEREFORE, the foregoing considered, the appeal is hereby **GRANTED** and the assailed decision is **REVERSED** and **SET ASIDE**. Accordingly, the petition to cancel the encumbrance of right of way is dismissed for lack of merit.

No costs.

SO ORDERED. [14]

Before us, petitioner alleges that the Court of Appeals erred in:

I.

... BRUSHING ASIDE PETITIONER'S CONTENTION THAT THE EASEMENT IS PERSONAL SINCE THE ANNOTATION DID NOT PROVIDE THAT IT IS BINDING ON THE HEIRS OR ASSIGNS OF SANDICO.

II.

... NOT CONSIDERING THAT THE EASEMENT IS PERSONAL SINCE NO COMPENSATION WAS GIVEN TO PETITIONER.

III.

... DISREGARDING THE CIVIL CODE PROVISION ON UNJUST ENRICHMENT.