

EN BANC

[G.R. No. 222482, June 02, 2020]

**PRINCESS RACHEL DEVELOPMENT CORPORATION AND BORACAY
ENCLAVE CORPORATION, PETITIONERS, V. HILL VIEW
MARKETING CORPORATION, STEFANIE DORNAU AND ROBERT
DORNAU, RESPONDENTS.**

DECISION

J. REYES, JR., J.:

Assailed in this Petition for Review on *Certiorari* are the November 28, 2014 Decision^[1] and the January 15, 2016 Resolution^[2] of the Court of Appeals-Cebu City (CA) in CA-G.R. C.V. No. 04415 which affirmed with modification the April 30, 2012 Decision^[3] of the Regional Trial Court, Kalibo, Aklan, Branch 6 (RTC) in Civil Case No. 8237, a case for *accion publiciana* and damages.

While the RTC and the CA agreed on the fact of encroachment by respondent Hillview Marketing Corporation (Hillview) on petitioners' properties, they differed on their findings as to whether Hillview was a builder in good faith or bad faith.

The Antecedents

On January 25, 2008, petitioner Princess Rachel Development Corporation (PRDC) filed a Complaint for *Accion Publiciana* and Damages with Prayer for Issuance of Writ of Preliminary Injunction against respondents Hillview, Stefanie Dornau (Stefanie) and Robert Dornau (Robert; collectively, respondents). The original complaint was amended to expunge claims for damages representing reasonable rentals in the amount of P3,402,669.00.^[4] Later on, PRDC's prayer to hold respondents "liable to pay damages in such amount" as may be determined by the RTC was likewise expunged.^[5]

In its Complaint, PRDC alleged that it is the registered and absolute owner of the following parcels of land: Lot 1-B-7-A-1 of the subdivision plan Psd-06-015339, with an area of 10,000 square meters, more or less, covered by Transfer Certificate of Title (TCT) No. T-24348; and Lot 1-B-7-B-1 of subdivision plan Psd-06-015339, with an area of 20,000 sq m, more or less, covered by TCT No. T-24349, both of the Register of Deeds of Kalibo, Aklan.

PRDC has been in physical possession of the said properties as early as May 1996 and has religiously paid the realty taxes thereon. In August 2007, Engineer Lester Madlangbayan (Engr. Madlangbayan) conducted a relocation survey on the properties and it was discovered that Hillview, which owns the adjoining property known as Lot 1-B-7-A-2, has encroached an area of 2,614 sq m, more or less.^[6] Further, respondents have built condominium units known as the Alargo Residences on the encroached area without PRDC's knowledge and consent. A survey conducted by Engr. Madlangbayan in September 2007 showed an encroachment of 4,685 sq m

when he inadvertently included a portion of a property belonging to the Vargas family in the survey.^[7]

PRDC alleged that the construction of the buildings on the encroached area was done in bad faith as the respondents have full knowledge of the territorial boundaries of their respective properties. Consequently, on September 20, 2007, PRDC sent respondents a demand letter requesting them to vacate the subject premises, but the latter ignored it. A subsequent letter to vacate was sent on September 27, 2007, but it was likewise left unheeded.

In their Answer, respondents counter that petitioner did not have prior physical possession over the disputed area. There was no manifestation of PRDC's claim of possession over the area in controversy and there was no noticeable mark or boundary which delineated the adjoining properties. The Alargo Residences project was allegedly constructed within respondents' own land which they bought from Leo Niel Tirol and Dem Tirol (the Tirols). Further, respondents diligently examined the titles and boundaries of the properties, and even obtained an approved survey plan thereof before they started the construction of the Alargo Residences project sometime in 2004.

Respondents also argue that PRDC has no cause of action against Stefanie and Robert because Hillview is imbued with a separate juridical personality, and there was no allegation of any specific wrongful act or omission on the part of Stefanie and Robert. Respondents contend that Hillview is both a buyer and builder in good faith, having bought the land free from any liens or encumbrances, and having constructed structures within the premises of the land which they bought from the Tirols.

The RTC directed the parties to submit their respective survey reports which shall be reviewed and evaluated by the court-appointed Commissioner. In compliance, PRDC submitted the relocation survey report with the attached survey plans, revealing an encroachment of about 2,614 sq m. Respondents, on the other hand, submitted the consolidated sketch plan, but not the relocation survey report. The consolidated sketch plan was a table survey which was made without the surveyor conducting an actual survey on the ground.^[8]

A survey was then scheduled by the court-appointed Commissioner. This survey was sought to be postponed by respondents on various grounds.^[9] The survey was nevertheless conducted and, thereafter, the Commissioner submitted his Report,^[10] with the following observations:

When plotted all structures using all references intact in actual ground, it was found out that portion of perimeter of concrete fence constructed by [Hillview] encroached the area claimed by [PRDC]. Area encroached in Lot 1-B-7-B-1 is 383 square meters and 2,400 square meters in Lot 1-B-7-A-1 with a total area of 2,783 square meters.

The land in question is fully developed with 3 conc. houses inside and a swimming pool.^[11]

Respondents opposed the Commissioner's Report and were, thus, instructed by the RTC to submit its own survey on the land. Trial on the merits thereafter ensued.

Among the witnesses presented by PRDC was Engr. Reynaldo Lopez (Engr. Lopez) who testified that he was hired by Hillview to survey Lot 1-B-7-A-2. At the survey, Engr. Lopez discovered an error in the concrete monuments mounted on the boundary limits of Hillview that encroached upon the boundary of PRDC. He informed Stefanie's husband and one of Hillview's owners, Martin Dornau (Martin), of the encroachment, but the latter instructed him to nevertheless proceed with the survey and that he will be responsible for the error.^[12] Since the adjoining property was vacant, Hillview kept developing the property.

Engr. Lopez further testified that he made an actual survey of the boundaries of Hillview and discovered that the boundary pointed by Hillview is not in accordance with the title. The boundary line agreed upon by the Tirols and the Vargases does not conform to the titles of the lots, and using this boundary line will result in encroachment. Again, Engr. Lopez informed Martin of his findings, but the latter nevertheless instructed him to proceed since the adjoining lot was vacant.^[13] The lots were then surveyed and all corner monuments were fully monumented, but the geographical position on the ground was altered and not in accordance with the title.^[14] They then proceeded with the partition and Hillview made improvements thereon.

Engr. Lopez explained that the reason why no encroachment was stated in the subdivision plans of Hillview was because the plans were based on the wrong boundary lines.^[15] He further explained that he was not allowed by the Vargases to place monuments as the existing concrete monuments were along the boundary of the Tirols and the Vargases. When he surveyed the lot of the Tirols being sold to Hillview, there were monuments that were already planted, but it was not in accordance with the technical description of the land.^[16] Engr. Lopez stressed that he informed Martin of the foregoing.^[17]

For its part, respondents presented, among others, the testimony of Althea C. Acevedo (Acevedo), the Chief of Technical Services Section of the Department of Environment and Natural Resources (DENR). Acevedo testified that the survey plans were submitted by Engr. Lopez and were approved by the DENR since said survey plans did not overlap with any previous plans. She further testified that the survey plans did not indicate any encroachment. On cross-examination, she confirmed that there can be a situation where no encroachment is indicated in the survey plans, but at actual ground survey there is an encroachment because of the reference point that was used. She testified that in this case, the reference monument was transferred two to three meters and that, accordingly, there is a great possibility of an encroachment.^[18]

The testimony of Atty. Rodolfo B. Pollentes (Atty. Pollentes), a geodetic engineer hired by respondents, was also presented. He sought to excuse respondents' non-submission of their own relocation survey for lack of reliable reference point within the two properties.^[19] He also impugns the survey conducted by the court-appointed Commissioner as it was supposedly conducted while the parties' representatives were discussing about the postponement of the survey.^[20] Atty. Pollentes also represented that since Engr. Lopez refutes his own survey, he should be liable for damages and revocation of license.^[21]

Notably, respondents did not present any geodetic engineer who may have conducted a relocation survey of its own property.

On rebuttal, Engr. Lopez testified that since there was a mistake in the survey plans which he submitted to the DENR, he wrote a letter seeking for the cancellation of said plans.^[22] Acevedo confirmed receipt of Engr. Lopez's request for cancellation, but stressed that if titles were already issued for the sub-lots, these titles should first be cancelled before the cancellation of the survey plans.^[23]

Meanwhile, PRDC sold its properties to Boracay Enclave Corporation (Boracay Enclave). For this reason, Boracay Enclave was joined as a party to the case.^[24]

The RTC Ruling

In a Decision dated April 30, 2012, the RTC ruled that there was encroachment on the basis of the survey conducted by the court-appointed Commissioner. It found that respondents encroached on about 383 sq m on Lot 1-B-7-B-1 and into about 2,400 sq m in Lot 1-B-7-A-1 of PRDC's properties, or a total of 2,783 sq m.

The RTC noted that the adjoining properties of PRDC and respondents were registered and, as such, encroachment can be determined by checking the metes and bounds of the properties as set forth in the titles. The parties' titles in this case contained no errors in the technical descriptions. To settle the issue of encroachment, the RTC emphasized that it ordered the parties to submit their respective relocation surveys, but respondents failed to comply.^[25] At any rate, the RTC observed that the fact of encroachment was settled through the actual survey conducted by the court-appointed Commissioner.^[26]

As to the issue of whether or not respondents are builders in bad faith, the RTC took note that PRDC anchored its imputation of bad faith on the testimony of Engr. Lopez. While noting that Engr. Lopez was the one who conducted the survey, discovered the encroachment, caused the survey to be approved, and who later on assailed these surveys as erroneous, the RTC was nevertheless convinced that Engr. Lopez has informed Martin of the encroachment which the latter ignored. The RTC found that respondents deliberately ignored Engr. Lopez's discovery as they were bent on developing the properties. In fact, the RTC noted that at the time of the survey, respondents have a subdivision plan already prepared.^[27]

The RTC also held that respondents' bad faith was further proven by the fact that Martin, despite having knowledge of the encroachment, acquiesced to the use of the wrong boundary line dividing the properties of the Tirols and the Vargases.^[28] The RTC declared that it was beneficial for the respondents to just maintain the use of the wrong boundary line as there were already established improvements on the premises. The use of the wrong boundary line resulted to the encroachment upon PRDC's adjoining properties.^[29]

Anent respondents' defense that their survey plans were approved and adopted by the DENR, the RTC ruled that such approval does not prove that there was no error in the conduct of the surveys or that respondents did not consent to the encroachment. The RTC noted that an approved survey may actually later on be corrected or cancelled.^[30] It likewise noted that Engr. Lopez himself assails the

correctness of the surveys he conducted and prepared, thus, there was no reason for respondents to insist on adopting and relying upon such surveys.^[31]

In conclusion, the RTC held that respondents acted in bad faith in introducing improvements on the encroached areas of PRDC's properties, and that, in spite of this, respondents refused to vacate the area despite demand.

Consequently, the RTC ordered respondents, jointly and severally, to vacate and demolish the buildings and improvements in the encroached premises at its own cost, and to return physical possession thereof to PRDC. The RTC also ordered respondents to pay attorney's fees in the amount of P200,000.00 and litigation expenses in the total amount of P3,546,163.20, composed of P143,494.20 as legal fees and P3,402,669.00 as additional filing fees.

The *fallo* reads:

WHEREFORE, in view of the foregoing premises, this Court hereby rules and so holds that the defendants have encroached into the properties of the plaintiff consisting of 383 sq m in Lot 1-B-7-B-1 covered by TCT No. T-24349 and 2,400 sq m in Lot 1-B-7-A-1 covered by TCT No. T-24348 or a total of 2,783 sq m in the name of plaintiff Princess Rachel Development Corporation and now in the name of Boracay Enclave Corporation. This Court also finds the defendants acting in bad faith in introducing the improvements on the said encroached areas of plaintiff's properties. By reason of the encroachment by defendant of plaintiff's properties and having refused to vacate said area despite demand, the plaintiff was forced to file this case and is entitled to recover litigation expenses in the amount of P143,494.20 (Legal Fees form dated January 25, 2008) plus P3,402,669.00 as additional filing fees or a total of P3,546,163.20 and attorney's fee of P200,000.00.

For this reason, the defendants, jointly and severally, are hereby ordered to vacate the said premises and demolish the buildings and improvements made in the encroached premises at its own cost and to return to plaintiff the physical possession of the encroached premises and to pay plaintiff the amount of P3,546,163.20 for litigation/filing fees and P200,000.00 as attorney's fees.

SO ORDERED.^[32]

Aggrieved, respondents appealed to the CA on the arguments that the encroachment was not established since the survey conducted by the court-appointed Commissioner was void since the latter did not take an oath before assuming his duties and that, instead, the approved survey plans prepared by Engr. Lopez which do not show any encroachment should be given weight. Respondents also dispute the finding of bad faith as they allegedly built on their own land which they bought from the Tirols. Should there be any finding of encroachment, they argued that it should be Engr. Lopez who must be held accountable because of his professional misconduct.^[33] Respondents also questioned the RTC's award of attorney's fees and litigation expenses for lack of basis.^[34]

The CA Ruling