

SECOND DIVISION

[G.R. No. 180808, August 15, 2018]

**SPOUSES ABRAHAM AND MELCHORA ERMINO, PETITIONERS, V.
GOLDEN VILLAGE HOMEOWNERS ASSOCIATION, INC.,
REPRESENTED BY LETICIA[*] C. INUKAI, RESPONDENT.**

DECISION

CAGUIOA, J:

Before the Court is a Petition for Review on *Certiorari*^[1] (Petition) under Rule 45 of the Rules of Court filed by petitioners, Spouses Abraham and Melchora Ermino (Spouses Ermino) assailing the Decision^[2] dated October 9, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 00044. The CA modified the Decision^[3] dated December 30, 2003 of the Regional Trial Court, Branch 24, Cagayan de Oro City (RTC) which found both E.B. Villarosa & Partners Co., Ltd. (E.B. Villarosa) and Golden Village Homeowners Association, Inc. (GVHAI) liable for damages to Spouses Ermino by absolving GVHAI of any liability.

The Facts and Antecedent Proceedings

Spouses Ermino are residents of Alco Homes, a subdivision located beside Golden Village Subdivision (Golden Village) in Barangay Carmen, Cagayan de Oro City.

On days prior to August 12, 1995 and September 10, 1995, there was continuous heavy rain which caused a large volume of water to fall from the hilltop subdivision to the subdivisions below.^[4] The volume of water directly hit Spouses Ermino's house and damaged their fence, furniture, appliances and car.^[5]

Spouses Ermino filed a complaint for damages against E.B. Villarosa, the developer of Hilltop City Subdivision, and GVHAI. The Hilltop City Subdivision is found at the upper portion of Alco Homes, making it a higher estate, while Golden Village is located beside Alco Homes, which makes both Alco Homes and Golden Village lower estates *vis-a-vis* Hilltop City Subdivision.

Spouses Ermino blamed E.B. Villarosa for negligently failing to observe Department of Environment and Natural Resources rules and regulations and to provide retaining walls and other flood control devices which could have prevented the softening of the earth and consequent inundation.^[6] They likewise claimed that GVHAI committed a wrongful act in constructing the concrete fence which diverted the flow of water to Alco Homes, hence, making it equally liable to Spouses Ermino.^[7]

Spouses Ermino prayed that E.B. Villarosa and GVHAI be made jointly and severally liable in the amount of P500,000.00 as actual damages, P400,000.00 as moral damages and P100,000.00 as exemplary damages.^[8] They likewise prayed for attorney's fees and litigation costs and expenses.^[9]

E.B. Villarosa argued that the location of the house of Spouses Ermino is located at the lower portion of the Dagong Creek and is indeed flooded every time there is a heavy downpour, and that the damage was further aggravated by GVHAI's construction of the concrete fence.^[10] It contended, however, that the damage was due to a fortuitous event.^[11] Meanwhile, GVHAI averred that the construction of the concrete fence was in the exercise of its proprietary rights and that it was done in order to prevent outsiders from using the steel grille from entering the subdivision.^[12] It likewise asserted that they "should not be made inutile and lame-duck recipients of whatever waters and/or garbage" that come from Alco Homes.^[13] GVHAI attributed sole liability on E.B. Villarosa for having denuded Hilltop City Subdivision and for its failure to provide precautionary measures.

Ruling of the RTC

The RTC found E.B. Villarosa and GVHAI jointly and severally liable for the damages to Spouses Ermino's properties, thus:

WHEREFORE, premises considered, judgment is hereby rendered:

(a) Holding defendants E.B. Villarosa and Partners Co. Limited and/or Eliezer Villarosa and Golden Village Homeowners Association[,] Inc., liable for the damage caused to the house of plaintiffs. Consequently, they are hereby ordered to pay jointly and severally plaintiffs, the following sums:

- 1) P561,535.53 for the damage of the house including attorney['s] fee as listed in Exh. 1-3 and 1-4;
- 2) P7,664.53 for the damage of the car;
- 3) P400.00 consultation fee;
- 4) P1,028.00 for hospital bill;
- 5) P35.00; P37.50; P31.00 and P75.00 for charge tickets of Cagayan Capitol College;
- 6) P20,000.00 for litigation expenses;

(b) Dismissing the cross-claim of defendant E.B. Villarosa and Partners Co. Limited against Golden Village Homeowners Association, Inc. there being no evidence adduced by said defendant E.B. Villarosa and Partners Co. Limited and/or Eliezer Villarosa against Golden Village Homeowners Association, Inc. as it was declared to have waived presenting evidence in its favor;

(c) Dismissing the cross-claim of defendant Golden Village Homeowners Association[, Inc.] against Alco Homes there being no sufficient evidence adduced during trial against said Alco Homes;

(d) Ordering defendant Golden Village Homeowners Association, Inc. to change the gate between Alco Homes and Golden Village Subdivision from concrete cement to steel [grille] or if not, to make many holes in the concrete cement gate so that the water that will flow will not be blocked and will just pass; and

(e) Denying plaintiff's prayer for moral and exemplary damages there being no sufficient evidence offered during trial.

SO ORDERED.^[14]

The RTC held that the bulldozing by E.B. Villarosa of the proposed Hilltop City Subdivision made the soil soft that it could easily be carried by a flow of water and that if GVHAI did not change the steel grille gate to concrete fence between its subdivision and Alco Homes, the flow of water would have just passed by.^[15] Thus, both E.B. Villarosa and GVHAI were negligent and liable to Spouses Ermino.

Ruling of the CA

Only GVHAI appealed to the CA. Thus, the trial court's decision attained its finality as regards E.B. Villarosa.

The CA reversed the RTC's Decision and found no liability on the part of GVHAI. The CA held that indeed, GVHAI exercised its proprietary rights when it constructed the concrete fence and that it was also not negligent. The dispositive portion reads:

WHEREFORE, premises foregoing, the appeal is hereby **GRANTED**. Defendant-appellant Golden Village Homeowners Association is absolved of any liability to herein [plaintiffs]-appellees. The assailed decision is **MODIFIED** insofar as GVHAFs liability to [plaintiffs]-appellees is concerned.^[16]

Issue

Whether the CA erred in ruling that GVHAI was not responsible for the damage to Spouses Ermino's properties.

The Court's Ruling

The Petition lacks merit.

Lack of malice or bad faith; and valid exercise of proprietary rights

Spouses Ermino impleaded GVHAI in their complaint for damages on the ground that the latter committed a wrongful act in replacing its steel grille gate with a concrete fence.^[17] Spouses Ermino asserted that had the steel grille gate been unchanged, the injury suffered by them would have been prevented.^[18] Spouses Ermino rely on Articles 20 and 21 of the Civil Code which state:

ARTICLE 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

ARTICLE 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

Malice or bad faith, at the core of Articles 20 and 21, implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.^[19] Records of the case reveal that while GVHAI replaced the steel grille gate with a concrete fence, the construction was not intended to obstruct whatever waters that may naturally flow from the higher estates.^[20] The concrete fence was made to

ward off undesirable elements from entering the subdivision.^[21] Thus, for purposes of Articles 20 and 21, the construction of the concrete fence is not contrary to any law, morals, good customs, or public policy.

There was also no negligence on the part of GVHAI. The test of negligence is stated in *Picart v. Smith, Jr.*:^[22]

The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged 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.^[23]

As correctly found by the CA, when GVHAI decided to construct the concrete fence, it could not have reasonably foreseen any harm that could occur to Spouses Ermino.^[24] Any prudent person exercising reasonable care and caution could not have envisaged such an outcome from the mere exercise of a proprietary act.^[25]

Indeed, the act of replacing the steel grille gate with a concrete fence was within the legitimate exercise of GVHAI's proprietary rights over its property. The law recognizes in the owner the right to enjoy and dispose of a thing, without other limitations than those established by law.^[26] Article 430 of the Civil Code provides that "(e)very owner may enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon."

***Easements relating to waters;
and rights and obligations of the
owners of the dominant and
servient estates***

Spouses Ermino likewise ascribe liability to GVHAI relying on Article 637 of the Civil Code and Article 50 of the Water Code, which state:

ARTICLE 637. Lower estates are obliged to receive the waters which naturally and without the intervention of man descend from the higher estates, as well as the stones or earth which they carry with them.

The owner of the lower estate cannot construct works which will impede this easement; neither can the owner of the higher estate make works which will increase the burden.

ARTICLE 50. Lower estates are obliged to receive the waters which naturally and without the intervention of man flow from the higher estates, as well as the stone or earth which they carry with them.

The responsibility imposed on lower estates to receive waters from higher estates is illustrated in the early case of *Lunod v. Meneses*,^[27] thus:

The lands of Paraanan being the lower are subject to the easement of receiving and giving passage to the waters proceeding from the higher lands and the lake of Calalaran; this easement was not constituted by agreement between the interested parties; it is of a statutory nature, and