

THIRD DIVISION

[G.R. No. 209359, October 17, 2018]

METROHEIGHTS SUBDIVISION HOMEOWNERS ASSOCIATION, INC., PETITIONER, V. CMS CONSTRUCTION AND DEVELOPMENT CORPORATION, TOMASITO T. CRUZ, TITA F. CRUZ, SIMONETTE F. CRUZ, ANGEL T. CRUZ, ERNESTO T. CRUZ AND METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS), RESPONDENTS.

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision^[1] and the Resolution^[2] of the Court of Appeals (CA), dated October 10, 2012 and September 30, 2013, respectively, in CA-G.R. CV No. 89085.

On June 29, 1992, petitioner Metroheights Subdivision Homeowners Association, Inc. filed with the Regional Trial Court (RTC)^[3] of Quezon City a complaint^[4] for damages with prayer for a temporary restraining order and/or writ of preliminary injunction and writ of preliminary mandatory injunction against respondents CMS Construction and Development Corporation (CMS Construction), Tomasito Cruz, Tita Cruz, Simonette Cruz, Angel Cruz, Ernesto Cruz (the Cruzes), and Metropolitan Waterworks and Sewerage System (MWSS).

Petitioner alleged, among others, that it sought the assistance of respondent MWSS to address the insufficient supply of water in its subdivision to which the latter advised the improvement and upgrading of its private internal water distribution lines, foremost of which was the transfer or change in the location of its tapping source and the change in size of its water service line from the old line tapped at Sanville Subdivision to a new tapping source on Visayas Avenue, Quezon City; that on November 16, 1990, petitioner entered into a contract with respondent MWSS for the new water service connection, and respondent MWSS awarded the project to a contractor which implemented the same, the cost of which was solely shouldered by contribution from petitioner's members amounting to P190,000.00, inclusive of labor, materials, and respondent MWSS' fees and charges; and that since then, there was already sufficient and strong water pressure twenty-four (24) hours a day in the petitioner's subdivision.

However, sometime in April 1992, respondent CMS Construction made diggings and excavations, and started to lay water pipes along Fisheries Street and Morning Star Drive in Sanville Subdivision, Quezon City, petitioner's neighboring subdivision; that in the process, respondent CMS Construction, with the knowledge and consent of respondent MWSS but without petitioner's knowledge and consent, unilaterally cut-off and disconnected the latter's new and separate water service connection on Visayas Avenue; that on May 28, 1992, petitioner's members were waterless, which

lasted for three (3) days, and that petitioner's polyvinyl chloride (PVC) pipes and radius elbow, valued at around P30,000.00, were stolen by respondent CMS Construction's workers; that when petitioner's officers discovered the illegal cutting of the water connection on May 30, 1992, they immediately complained to the respondents and demanded for the restoration of their water line; that respondent CMS Construction only made a temporary reconnection with the use of a 2-inch rubber hose to the new water line it constructed at Sanville Subdivision; and that despite petitioner's verbal and written demands, respondents have failed to restore petitioner's water line connection in its original state and to return the missing PVC pipes and radius elbow.

In its Answer with Counterclaim, respondent MWSS averred, among others, that on August 16, 1991, it entered into a contract with respondent CMS Construction for the mainlaying and rehabilitation of the existing water main and appurtenances, and the installation/replacement of water service connection at Sanville Subdivision, Quezon City; that in connection with the said undertaking, it necessitated the creek crossing of a 150 mm cast iron pipe to be placed alongside the bridge situated along Morning Star Drive in Quezon City; that alongside the said bridge, there existed two pipes with casings, one of which was owned by petitioner; that it designed the placing of the 150 mm cast iron pipe alongside the above-stated bridge and the design included the interconnection of the two existing pipes; that the aforementioned interconnection features the use of split tap tees, one of which was for the 100 mm pipe allegedly owned by petitioner; and that the infrastructure project aimed to improve the water pressure of eight (8) subdivisions in Tandang Sora which included Metroheights Subdivision.

On the other hand, respondents CMS Construction and the Cruzes claimed that they were awarded by respondent MWSS a contract for the latter's Manila Water Supply Rehabilitation Project II, covering the Tandang Sora area, to provide an improved and equitable water distribution to eight (8) subdivisions located therein; that its proposed working drawings had been reviewed and approved by respondent MWSS; that it is not true that it started laying water pipes along the Morning Star Drive water pipeline by unilaterally cutting off and disconnecting petitioner's existing water pipeline measuring 100-mm (4-inches) in diameter along the said creek as the same was replaced with a PVC water pipe measuring 150-mm in diameter; that the alleged cutting off, disconnection and replacement of petitioner's pipeline bigger in diameter took only three to four hours, and the resumption of the water flow after replacement could not have rendered the homeowners waterless for three (3) days; and that the officers and engineers of petitioner were previously consulted on the rehabilitation project.

On March 30, 1999, the RTC rendered a Decision,^[5] the dispositive portion of which provides:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff. Defendants are hereby ordered to jointly and severally pay plaintiff the sum of:

1. P190,000.00 as and by way of actual damages;
2. P100,000.00 as and by way of nominal damages;
3. P100,000.00 as and by way of exemplary damages;
4. P50,000.00 as and by way of attorney's fees; and
5. The costs of this [s]uit.

SO ORDERED[.]^[6]

The RTC found, among others, that respondents did not have the authority to simply cut, disconnect and transfer petitioner's water supply with impunity, without notice to or without getting its consent; and that respondents acted in concert and in bad faith, which made them jointly and severally liable for damages.

Respondent MWSS filed its notice of appeal while respondents CMS Construction and the Cruzes filed a motion for new trial which the RTC granted.

On May 18, 2006, the RTC issued a Decision^[7] which affirmed its earlier Decision dated March 30, 1999.

The RTC found that respondents' claim of *damnum absque injuria* was not tenable. Under the principle of *damnum absque injuria*, the legitimate exercise of a person's right, even if it causes loss to another, does not automatically result in an actionable injury and the law does not prescribe a remedy for the loss. However, this principle admits of exception as when there is an abuse of a person's right. The exercise of one's right should be done in a manner that will not cause injustice to another. Since water is a basic necessity, the lack thereof not only caused inconvenience but posed health concerns as well. Notice to petitioner of the interruption of the water supply should have been made prior to the implementation of the project.

Respondents' motion for reconsideration was denied.

Respondents filed their appeal with the CA. On October 10, 2012, the CA issued its assailed decision, the decretal portion of which reads:

WHEREFORE, the appeal is GRANTED. The Decision dated May 18, 2006, as well as the Decision dated March 30, 1999 of the Regional Trial Court of Quezon City are REVERSED and SET ASIDE. The complaint below is hereby DISMISSED for lack of merit.^[8]

The CA found that the respondents' rehabilitation project was not undertaken without any notice at all; that respondents' actions were merely consequential to the exercise of their rights and obligations to manage and maintain the water supply system, an exercise which includes water rehabilitation and improvement within the area, pursuant to a prior agreement for the water supply system; and that the alleged abuse of right was not sufficiently established.

Petitioner's motion for reconsideration was denied by the CA in a Resolution dated September 30, 2013.

Hence, this petition for review on *certiorari* filed by petitioner, raising the following issues:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS PRIOR NOTICE UPON THE PETITIONER OF THE REHABILITATION PROJECT BEFORE IT WAS UNDERTAKEN BY THE RESPONDENTS;

WHETHER OR NOT THE COURT OF APPEALS CANNOT BE HELD LIABLE UNDER ARTICLE 19 OF THE CIVIL CODE;

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THE ABUSE OF RIGHT OF THE RESPONDENTS WAS NOT SUFFICIENTLY ESTABLISHED;

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DISMISSING THE COMPLAINT AND ABSOLVING RESPONDENTS OF ANY CIVIL LIABILITY IN FAVOR OF THE PETITIONER.^[9]

The issue for resolution is whether the respondents should be held liable for damages for the cutting off, disconnection and transfer of petitioner's existing separate water service connection on Visayas Avenue without the latter's knowledge and consent which also resulted in petitioner's subdivision being waterless.

To begin with, to address the perennial problem of insufficient supply of water in Metroheights Subdivision, petitioner had filed its application for transfer location of tapping/change size of the water service connection on Visayas Avenue with respondent MWSS, which the latter approved and implemented; thus, petitioner had uninterrupted water supply. On August 16, 1991, respondent MWSS entered into a contract with respondent CMS Construction for the mainlaying and rehabilitation of existing water main and appurtenances, and the installation/replacement of water service connection at Sanville Subdivision, Quezon City. In the process, petitioner's existing water service connection on Visayas Avenue was cut-off, disconnected and transferred by respondents, and petitioner's homeowners experienced loss of water supply for three (3) days.

The RTC found respondents liable for damages on the basis of abuse of right under Article 19 of the New Civil Code, giving credence to petitioner's claim that there was no notice to it prior to the implementation of respondents' project. The CA reversed the RTC and found that there was no abuse of right committed by the respondents, as the project was not undertaken without notice to petitioner.

We reverse the CA.

Article 19 of the New Civil Code deals with the principle of abuse of rights, thus:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

"The principle of abuse of rights x x x departs from the classical theory that 'he who uses a right injures no one.' The modern tendency is to depart from the classical and traditional theory, and to grant indemnity for damages in cases where there is an abuse of rights, even when the act is not illicit."^[10]

"Article 19 [of the New Civil Code] was intended to expand the concept of torts by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to provide[,] specifically in statutory law. If mere fault or negligence in one's acts can make him liable for damages for injury caused thereby, with more reason should abuse or bad faith make him liable. The absence of good faith is essential to abuse of right. Good faith is an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of the law, together with an absence of all information or belief of fact which would render the transaction unconscientious. In business relations, it means good faith as understood by men of affairs."^[11]

"While Article 19 [of the New Civil Code] may have been intended as a mere declaration of principle, the 'cardinal law on human conduct' expressed in said article has given rise to certain rules, e.g. that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability. The elements of an abuse of rights under Article 19 are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another."
[12]

Here, it was admitted by Engr. Victor Cariaga,^[13] an MWSS consultant, and Mr. Tomasito Cruz,^[14] respondent CMS Construction's President, that petitioner has its own pipeline or source of water coming from Visayas Avenue. Respondents also admitted that because of the rehabilitation project they were undertaking, petitioner's water pipeline, measuring 100 mm in diameter along the side of the creek, was replaced with a PVC plastic pipe 150 mm in diameter; and that petitioner's water line had to be transferred, and in the process of transferring, petitioner's existing water line had to be cut off. Considering that respondents would disconnect and change petitioner's existing water line tapped from Visayas Avenue to another tapping source, good faith and prudence dictate that petitioner should be informed or notified of such actions, as respondents admitted that prior notice to affected areas is a standard operating procedure. More so, petitioner's members had spent their own money to pay for their existing water connection on Visayas Avenue to address the perennial problem of the lack of water supply in their area.

The CA found that the rehabilitation project was not undertaken without notice to petitioner, which was contrary to the RTC's finding that there was no notice given to petitioner. The matter of whether there was notice to petitioner is factual. It is elementary that a question of fact is not appropriate for a petition for review on certiorari under Rule 45 of the Rules of Court. The parties may raise only questions of law because the Supreme Court is not a trier of facts. However, we may review the findings of fact by the CA when they are contrary to those of the trial court, as in this case.^[15]

In finding that there was notice given by the respondents to petitioner, the CA relied on the testimonies of Tomasito Cruz, President of respondent CMS Construction, that prior to the actual implementation of the project, permissions from the Office of the City Engineer and the affected homeowners' associations were sought; and that of Engr. Victor Cariaga, consultant of respondent MWSS, saying that it is an operating procedure to give letters to the homeowners, as well as to the barangays affected, notifying them of the objective of the project and requesting for meetings.

Notably, however, the CA failed to consider that Tomasito Cruz testified during his cross-examination that there was no notice to petitioner coming from their company, to wit:

Q: Now, do I get from you that CMS or any of its officers including you did not personally give a written notice to the plaintiff prior to the implementation of this water rehab project?

A: Our company...that is not our responsibility. Because the one who owns the project is MWSS and they are the ones who asked for permission.