816 Phil. 673

SECOND DIVISION

[G.R. No. 222821, August 09, 2017]

NORTH GREENHILLS ASSOCIATION, INC., PETITIONER, V. ATTY. NARCISO MORALES, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

In this petition for review on *certiorari* with application for temporary restraining order and writ of preliminary injunction[1] filed under Rule 45 of the Rules of Court, petitioner North Greenhills Association, Inc. *(NGA)* seeks the review of the March 13, 2015 Decision[2] and February 3, 2016 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 131707, which affirmed the February 17, 2010 Decision[4] and August 8, 2013 Resolution[5] of the Office of the President *(OP)* in O.P. Case No. 08-1-004. The CA ruled in favor of respondent Atty. Narciso Morales *(Atty. Morales)*, a resident of North Greenhills Subdivision, who filed a Complaint before the Housing and Land Use Regulatory Board *(HLURB)*, docketed as HLURB Case No. HOA-A-050425-0014, against the NGA for allegedly blocking his side access to the community park.

Factual Antecedents

Atty. Morales is a resident of North Greenhills Subdivision in San Juan City. His house is located alongside Club Filipino Avenue and adjacent to McKinley Park, an open space/playground area owned and operated by NGA. He also has a personal access door, which he built through a wall separating his house from the park. This access door, when unlocked, opens directly into the park.

On the other hand, NGA, an association composed of members of the subdivision, organized to promote and advance the best interests, general welfare, prosperity, and safeguard the well-being of the owners, lessees and occupants of North Greenhills, is the undisputed owner of the park. It has acquired ownership thereof through a donation made by the original owner, Ortigas &. Co. Ltd.

In June 2003, NGA started constructing a pavilion or kiosk occupying the side of the park adjacent to the residence of Atty. Morales. Part of the design was a public restroom intended to serve the needs of park guests and members of NGA. Said restroom was constructed alongside the concrete wall separating the house of Atty. Morales from the park.

Objecting to the construction of the restroom, Atty. Morales filed on July 23, 2003 a complaint before the HLURB, docketed as HLURB Case No. NCRHOA-072303-309. On August 13, 2013, he amended his complaint and additionally sought the demolition of the pavilion which was then being built.

In his Amended Complaint, Atty. Morales alleged that for a period spanning 33 years, he had an open, continuous, immediate, and unhampered access to the subdivision park through his side door, which also served as an exit door in case of any eventuality; that having such access to the park was one of the considerations why he purchased the lot; that the construction of the pavilion was illegal because it violated his right to immediate access to the park, Presidential Decree No. 957 and the Deed of Donation of Ortigas & Co. Ltd., which required the park to be maintained as an open area; and that the restroom constructed by NGA was a nuisance *per se*.

NGA, in its Answer with Compulsory Counterclaim, rejected the assertions of Atty. Morales. It contended that as the absolute owner of the park, it had the absolute right to fence the property and impose reasonable conditions for the use thereof by both its members and third parties; that the construction of the restroom was for the use and benefit of all NGA members, including Atty. Morales; and that Atty. Morales' use of a side entrance to the park for 33 years could not have ripened into any right because easement of right of way could not be acquired by prescription. NGA likewise sought the payment of P878,778.40 corresponding to the annual membership dues which Atty. Morales had not been paying since 1980.

On April 13, 2003, the HLURB Arbiter conducted an ocular inspection of the park and noted that the construction started by NGA blocked Atty. Morales' side access to the park.

On February 16, 2005, the HLURB Arbiter rendered a Decision,[6] the decretal portion of which reads:

> **WHEREFORE**, **PREMISES CONSIDERED**, judgment is hereby rendered ordering respondents of the removal of the pavilion and the relocation of the common toilet in a place where it will not be a nuisance to any resident. Respondents are further directed to remove the obstruction to the side door of the complainant. All other claims and counterclaims are hereby dismissed for lack of merit.
>
> **IT IS SO ORDERED.**[7]

NGA appealed to the HLURB Board of Commissioners *(HLURB Board)*. In its November 22, 2007 Decision,[8] the HLURB Board *modified* the ruling of the HLURB Arbiter, thus:

> Further, the complaint against respondent Alviar should be dropped as no acts have been particularly attributed to him in his personal capacity.
>
> **WHEREFORE**, premises considered, the decision of the Regional Office is hereby **MODIFIED**. Accordingly, respondent NGA is ordered to relocate the restroom constructed or being constructed in the McKinley Park away from the walls of any resident and where it will not block complainant's side door access to the park.
>
> **SO ORDERED.**[9]

NGA appealed to the Office of the President *(OP)*.

On February 17, 2010, the OP rendered its decision, *affirming in toto* the ruling of the HLURB Board.

NGA moved for reconsideration, but its motion was denied by the OP in its August 8, 2013 Resolution.

Aggrieved, NGA filed a petition for review under Rule 43 of the Rules of Court before the CA, arguing that the OP erred in its findings.

Ruling of the CA

In its March 13, 2015 Decision,[10] the CA affirmed the ruling of the OP. It found no error on the part of the OP in affirming the characterization of the restrooms built as nuisance *per accidens* considering that the structure posed sanitary issues which could adversely affect not only Atty. Morales, but also his entire household; that even if there existed a perimeter wall between the park and Atty. Morales' home, the odor emanating from the restroom could easily find its way to the dining area, and the foul and noxious smell would make it very difficult and annoying for the residents of the house to eat; and that the proximity of the restroom to Atty. Morales' house placed the people residing therein at a greater risk of contracting diseases both from improperly disposed waste and human excrements, as well as from flies, mosquitoes and other insects, should NGA fail to maintain the cleanliness of the structures.

The CA stated that NGA's fear of being exposed to outsiders and criminals because Atty. Morales' access was unfounded. It pointed out that the door had been in existence for more than three decades and that if dangers truly existed, NGA should have taken immediate action and blocked the side access years earlier. It then pointed out other ways to remedy the security concerns of NGA, such as placing a wall strategically placed at the border of the park or additional guards to patrol the vicinity.

As to the counterclaim of NGA for association dues, the CA held that the claim was in the nature of a permissive counterclaim, which was correctly dismissed by the OP.

NGA moved for reconsideration, but its motion was denied by the CA in its February 3, 2016 Resolution.

Hence, this petition.

GROUNDS:

I.

THE COURT OF APPEALS SERIOUSLY ERRED IN COMPLETELY DISREGARDING THE HLURB'S LACK OF JURISDICTION OVER THE INSTANT CASE.

(1)

RESPONDENT MORALES FAILED TO ALLEGE IN HIS COMPLAINT (OR AMENDED COMPLAINT) THAT HE IS A MEMBER OF NGA - A FATAL JURISDICTIONAL DEFECT FOR FAILURE TO PROPERLY LAY THE PREDICATE THAT

WOULD HAVE ENABLED THE HLURB TO ACQUIRE JURISDICTION OVER THE INSTANT ACTION.

(2)

IN THE CASE OF *STA. CLARA HOMEOWNERS' ASSOCIATION V. GASTON* (G.R. NO. 141961, JANUARY 23, 2002), THE HONORABLE COURT RULED THAT WHERE THE BODY OF THE COMPLAINT FILED IN THE NOW HLURB FAILS TO MENTION THAT THE COMPLAINANT IS A MEMBER OF THE ASSOCIATION HE IS SUING, SUCH COMPLAINT MUST BE DISMISSED FOR LACK OF JURISDICTION.

(3)

PETITIONER NGA'S CLAIM FOR UNPAID ASSOCIATION DUES DOES NOT PRECLUDE IT FROM ASSAILING RESPONDENT'S MEMBERSHIP IN THE NGA.

(4)

IN THE CASE OF *GREGORIO C. JAVELOSA V. COURT OF APPEALS* (G.R. NO. 124292, DECEMBER 10, 1996), THE HONORABLE COURT RULED THAT "IT IS SETTLED THAT THE JURISDICTION OF COURTS OVER THE SUBJECT MATTER OF LITIGATION IS DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT. IT IS EQUALLY SETTLED THAT AN ERROR OF JURISDICTION CAN BE RAISED AT ANY TIME AND EVEN FOR THE FIRST TIME ON APPEAL."

II.

THE COURT OF APPEALS SERIOUSLY ERRED AND IS MANIFESTLY MISTAKEN IN RULING THAT THE TOILET BUILT BY NGA AT THE MCKINLEY PARK IS A NUISANCE *PER ACCIDENS*, ON THE BASIS OF MERE SPECULATION, SUPPOSITION AND PURE CONJECTURE, CONSIDERING THE TOTAL LACK OF EVIDENCE ON RECORD TO PROVE SO.

(1)

RESPONDENT ATTY. MORALES DID NOT SET OUT TO PROVE THAT THE TOILET ADJACENT HIS HOUSE INJURED HIM OR THAT FOUL ODOR EMANATED FROM IT BECAUSE HE MISTAKENLY ALLEGED THAT THE TOILET WAS A NUISANCE *PER SE*.

(2)

BY FAILING TO ADDUCE EVIDENCE THAT THE TOILET, IN ANY WAY, ANNOYED RESPONDENT'S SENSES, OR THAT FOUL ODOR EMANATED FROM IT, OR THAT IT POSED SANITARY ISSUES DETRIMENTAL TO HIS

FAMILY'S HEALTH - THE SUBJECT TOILET CANNOT BE LEGALLY CONSIDERED NUISANCE *PER ACCIDENS*.

(3)

INDEED, A CURSORY VIEW OF THE PERTINENT DISCUSSION IN THE ASSAILED DECISION REVEALS THAT THE COURT OF APPEALS SADLY TOOK THE PATH OF SPECULATION, SUPPOSITION AND PURE CONJECTURE IN JUSTIFYING ITS DECISION.

III.

THE ASSAILED 13 MARCH 2015 DECISION IS PATENTLY ERRONEOUS AS IT IS BASED ON GRAVE MISAPPREHENSION OF FACTS AND OF THE EVIDENCE - OR THE TOTAL LACK OF IT - ON RECORD.

(1)

INDEED, A PERUSAL OF THE RECORDS WOULD REVEAL THAT THERE WAS NO EVIDENCE WHATSOEVER ADDUCED BY THE RESPONDENT DEMONSTRATING THAT THE SUBJECT TOILET HAS CAUSED PHYSICAL ANNOYANCE OR DISCOMFORT TO HIM. NO TESTIMONY HAS EVER BEEN BROUGHT TO THE HLURB OR THE OFFICE OF THE PRESIDENT SHOWING THAT THE TOILET EMITTED ANY FOUL SMELL, OR ODOR, OR AT THE VERY LEAST, ANNOYED RESPONDENT MORALES EVERY TIME HE WOULD EAT IN HIS DINING AREA.

(2)

AS A MATTER OF FACT, IT IS WORTH TO NOTE THAT THE RESPONDENT DID NOT EVEN SUBMIT A POSITION PAPER BEFORE THE HLURB TO ATTEST TO AND PROVE SUCH FACTUAL MATTERS.

(3)

IN THE VERY CASE CITED BY THE COURT OF APPEALS, *SMART COMMUNICATIONS V. ALDECOA* (G.R. NO. 166330, SEPTEMBER 11, 2013), THE HONORABLE COURT STRUCK DOWN THE RULING OF THE LOWER COURT AND PRONOUNCED THAT A DECISION THAT DECLARES A THING TO BE A NUISANCE *PER ACCIDENS* MUST BE SUPPORTED BY FACTUAL EVIDENCE AND NOT BY MERE CONJECTURES OR SUPPOSITIONS.

IV.

THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING RESPONDENT ATTY. MORALES' UNBRIDLED ACCESS TO MCKINLEY PARK, EFFECTIVELY CONSTITUTING AN EASEMENT OF RIGHT OF WAY WITHOUT ANY BASIS - AS AGAINST THE CLEAR STATUTORY