

SECOND DIVISION

[G.R. No. 183719, February 02, 2011]

MARGARITA F. CASTRO, PETITIONER, VS. NAPOLEON A. MONSOD, RESPONDENT.

DECISION

NACHURA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision^[1] dated May 25, 2007 and the Resolution^[2] dated July 14, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 83973.

The antecedents of the case are as follows:

Petitioner is the registered owner of a parcel of land located on Garnet Street, Manuela Homes, Pamplona, Las Piñas City, and covered by Transfer Certificate of Title (TCT) No. T-36071, with an area of one hundred thirty (130) square meters (sq.m.). Respondent, on the other hand, is the owner of the property adjoining the lot of petitioner, located on Lyra Street, Moonwalk Village, Phase 2, Las Piñas City. There is a concrete fence, more or less two (2) meters high, dividing Manuela Homes from Moonwalk Village.^[3]

On February 29, 2000, respondent caused the annotation of an adverse claim against sixty-five (65) sq.m. of the property of petitioner covered by TCT No. T-36071. The adverse claim was filed without any claim of ownership over the property. Respondent was merely asserting the existing legal easement of lateral and subjacent support at the rear portion of his estate to prevent the property from collapsing, since his property is located at an elevated plateau of fifteen (15) feet, more or less, above the level of petitioner's property.^[4] Respondent also filed a complaint for malicious mischief and malicious destruction before the office of the *barangay* chairman.^[5]

In defiance, petitioner filed a complaint for damages with temporary restraining order/writ of preliminary injunction before the Regional Trial Court (RTC) of Las Piñas City. Petitioner also prayed that the Register of Deeds of Las Piñas City be ordered to cancel the annotation of the adverse claim on TCT No. T-36071.^[6]

Prior to the filing of the case before the RTC, there were deposits of soil and rocks about two (2) meters away from the front door of the house of

petitioner. As such, petitioner was not able to park her vehicle at the dead-end portion of Garnet Street. When petitioner noticed a leak that caused the front portion of her house to be slippery, she hired construction workers to see where the leak was coming from. The workers had already started digging when police officers

sent by respondent came and stopped the workers from finishing their job.^[7]

Petitioner averred that when she bought the property from Manuela Homes in 1994, there was no annotation or existence of any easement over the property. Respondent neither asked permission nor talked to her with regard to the use of 65 sq.m. of her property as easement. Upon learning of the adverse claim, she felt disturbed and experienced sleepless nights for fear that she would not be able to sell her property. Petitioner admitted that TCT No. 36071 does not cover the open space at the dead-end portion of Garnet Street.^[8]

For his part, respondent claimed that he and his family had been residing in Moonwalk Village since June 1984. Adjacent to his property is the land of petitioner in Manuela Homes. When he bought the property in 1983, the land elevation of Moonwalk Village was almost on the same level as Manuela Homes. However, sometime in 1985 and 1986, Pilar Development Corporation, the developer of Manuela Homes, bulldozed, excavated, and transferred portions of the elevated land to the lower portions of Manuela Homes. Thus, Manuela Homes became lower than Moonwalk Village.^[9]

Before the said excavation, respondent personally complained to Pilar

Development Corporation and was assured that, as provided by the National Building Code, an embankment will be retained at the boundary of Manuela Homes and Moonwalk Village, which is more or less fifteen (15) feet higher than Manuela Homes.^[10]

Manuela Homes retained the embankment consisting of soil and rocks. Respondent had the open space riprapped with stones as reinforcement against any potential soil erosion, earthquake, and possible digging by any person.

Respondent asserted that the affidavit of adverse claim was for the annotation of the lateral and subjacent easement of his property over the property of petitioner, in view of the latter's manifest determination to remove the embankment left by the developer of Manuela Homes.

On October 11, 2004, the RTC rendered a decision,^[11] the dispositive portion of which reads:

WHEREFORE, premises considered, this court hereby renders judgment: (1) ordering the cancellation of [respondent's] adverse claim at the back of Transfer Certificate of Title No. T-36071 at the expense of [respondent] Napoleon Monsod; (2) ordering the said [respondent] to pay the herein [petitioner] the amount of Php50,000.00 as moral damages; and (3) dismissing [petitioner's] claim for actual damages, attorney's fees, litigation costs and costs of suit and [respondent's] compulsory counterclaim for lack of merit.

SO ORDERED.^[12]

The trial court ratiocinated that the adverse claim of respondent was non-registrable considering that the basis of his claim was an easement and not an interest adverse to the registered owner, and neither did he contest the title of petitioner. Furthermore, the adverse claim of respondent failed to comply with the requisites provided under Section 70 of Presidential Decree No. 1529.^[13]

On appeal, the CA reversed the decision of the trial court in a Decision^[14] dated May 25, 2007, the *fallo* of which reads:

WHEREFORE, premises considered, the instant appeal is **GRANTED**. The Decision of the Regional Trial Court, Branch 198, Las Piñas City dated October 11, 2004 is **REVERSED and SET ASIDE**. The Court hereby orders the retention of the annotation at the back of Transfer Certificate of Title No. T-36071, not as an adverse claim, but a recognition of the existence of a legal easement of subjacent and lateral support constituted on the lengthwise or horizontal land support/embankment area of sixty-five (65) square meters, more or less, of the property of [petitioner] Margarita Castro. The writ of preliminary injunction issued by this Court on April 18, 2006 is hereby made permanent. [Petitioner's] claim for damages is likewise **DISMISSED**.

SO ORDERED.^[15]

The CA ruled that while respondent's adverse claim could not be sanctioned because it did not fall under the requisites for registering an adverse claim, the same might be duly annotated in the title as recognition of the existence of a legal easement of subjacent and lateral support. The purpose of the annotation was to prevent petitioner from making injurious excavations on the subject embankment as to deprive the residential house and lot of respondent of its natural support and cause it to collapse. Respondent only asked that petitioner respect the legal easement already existing thereon.^[16]

On June 15, 2007, petitioner filed a motion for reconsideration. However, the CA denied the same in a Resolution^[17] dated July 14, 2008.

Hence, this petition.

The issue in this case is whether the easement of lateral and subjacent support exists on the subject adjacent properties and, if it does, whether the same may be annotated at the back of the title of the servient estate.

Article 437 of the Civil Code provides that the owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works, or make any plantations and excavations which he may deem proper. However, such right of the owner is not absolute and is subject to the following limitations: (1) servitudes or easements,^[18] (2) special laws,^[19] (3) ordinances,^[20] (4) reasonable requirements of aerial navigation,^[21] and (5) rights of third persons.^[22]