

THIRD DIVISION

[G.R. No. 160613, February 12, 2008]

APOLINARDITO C. QUINTANILLA and PERFECTA C. QUINTANILLA, Petitioners, vs. PEDRO ABANGAN and DARYL'S COLLECTION INTL. INC., Respondents.

RESOLUTION

NACHURA, J.:

Before this Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision^[2] dated April 21, 2003, which affirmed the Decision^[3] of the Regional Trial Court (RTC), Branch 57 of Cebu City, dated June 21, 2000.

This controversy flows from a case for Easement of Right of Way filed by petitioner Apolinardito C. Quintanilla (Apolinardito) and his mother, petitioner Perfecta C. Quintanilla (Perfecta) against respondent Pedro Abangan (Pedro) and respondent Daryl's Collection International, Inc. (DARYL'S).

Sometime in the 1960s, Perfecta bought Lot No. 3771-B-1-A, with an area of 2,244 square meters, located at Inayawan, Cebu City (the dominant estate) from one Dionisio Abasolo, who formerly owned all the properties therein. Thereafter, Perfecta donated the dominant estate to Apolinardito, who is now the registered owner thereof.^[4] Petitioners own QC Rattan Inc., a domestic corporation engaged in the manufacture and export of rattan-made furniture. In the conduct of their business, they use vans to haul and transport raw materials and finished products. As they wanted to expand their business and construct a warehouse on their property (the dominant estate), they asked for a right of way from Pedro sometime in April 1994.

However, it appears that Pedro, who was the owner of Lot No. 3771-A-1, containing an area of 1,164 square meters^[5] (the servient estate) and a lot near the dominant estate, sold the same to DARYL'S on March 24, 1994,^[6] and thereafter, DARYL'S constructed a warehouse over the servient estate, enclosing the same with a concrete fence.

Petitioners, thus, sought the imposition of an easement of right of way, six (6) meters in width, or a total area of 244 square meters, over the servient estate.

On June 21, 2000, the RTC dismissed the case for lack of merit. The RTC held that petitioners failed to establish that the imposition of the right of way was the least prejudicial to the servient estate. The RTC noted that there is already a concrete fence around the area and that six (6) meters from the said concrete fence was a concrete warehouse. Thus, substantial damage and substantial reduction in area would be caused the servient estate. Moreover, the RTC observed that petitioners'

insistence on passing through the servient estate would make for easy and convenient access to the main thoroughfare for their vans. Otherwise, if the right of way were to be constituted on any of the other surrounding properties, their vans would have to make a turn. On this premise, the RTC opined that mere convenience to the dominant estate was not necessarily the basis for setting up a compulsory easement of right of way.

Aggrieved, petitioners went to the CA on appeal.

In its Decision dated April 21, 2003, the CA affirmed the RTC Decision, holding that the criterion of least prejudice to the servient estate must prevail over the shortest distance. A longer way may, thus, be established to avoid injury to the servient tenement, such as when there are constructions or walls which can be avoided by a round-about way,^[7] as in this case. Petitioners filed a Motion for Reconsideration,^[8] but the same was denied in the CA Resolution^[9] dated September 24, 2003.

Hence, the instant petition based on the following grounds:

a) IN A COMPULSORY EASEMENT OF RIGHT OF WAY, AS SET FORTH IN THE PRECONDITIONS UNDER ARTICLES 649^[10] AND 650^[11] OF THE NEW CIVIL CODE, THE DETERMINATION OF THE LEAST PREJUDICIAL OR LEAST DAMAGE TO THE SERVIENT ESTATE SHOULD BE AT THE TIME OF THE FILING OF THE ORIGINAL COMPLAINT AND NOT AFTER THE FILING, ESPECIALLY WHEN THE OWNER OF THE SERVIENT ESTATE IS GUILTY OF ABUSE OF RIGHTS CONSIDERED AS THE GREATEST OF ALL POSSIBLE WRONGS OR BAD FAITH BY CONSTRUCTING A CONCRETE FENCE AND WAREHOUSE THEREON THROUGH MISREPRESENTATION TO THE OFFICE OF THE CEBU CITY BUILDING OFFICIAL THAT IT HAD GRANTED A RIGHT OF WAY OF SIX (6) METERS TO PETITIONERS; AND

b) WHETHER OR NOT COMPLIANCE WITH THE PRECONDITIONS SET FORTH IN ARTICLES 649 AND 650 OF THE NEW CIVIL CODE IS SUPERIOR TO THE "MERE CONVENIENCE RULE AGAINST THE OWNER OF THE DOMINANT ESTATE."

Petitioners claim that DARYL'S constructed the concrete fence only after petitioners filed the case for an Easement of Right of Way against Pedro on May 27, 1994. They submit that the criterion of least prejudice should be applied at the time of the filing of the original complaint; otherwise, it will be easy for the servient estate to evade the burden by subsequently constructing structures thereon in order to increase the damage or prejudice.^[12] Moreover, they pointed out that a Notice of *Lis Pendens* was annotated on Pedro's title. Thus, petitioners aver that DARYL'S is in bad

faith and is guilty of abuse of rights as provided under Article 19^[13] of the New Civil Code.^[14]

On the other hand, DARYL'S counters that petitioners belatedly imputed bad faith to it since petitioners' pre-trial brief filed with the RTC contained no allegation of bad faith or misrepresentation. Moreover, DARYL'S reiterates its position that establishing a right of way over the servient estate would cause substantial damage, considering that a concrete fence has already been erected thereon. Most

importantly, DARYL'S submits that petitioners can have adequate ingress to or egress from the dominant estate by passing through other surrounding vacant lots. Lastly,

DARYL'S points out that when Perfecta bought the dominant estate from Dionisio Abasolo, the surrounding lots were also owned by the latter.^[15]

For his part, Pedro manifests that he is adopting all the defenses invoked by DARYL'S in the belief that he is no longer a party to the instant case as he had already sold the servient estate to DARYL'S and a title already issued in the latter's name.^[16]

The instant petition lacks merit.

We hold that Apolinardito as owner of the dominant estate together with Perfecta failed to discharge the burden of proving the existence and concurrence of all the requisites in order to validly claim a compulsory right of way against respondents.^[17]

It should be remembered that to be entitled to a legal easement of right of way, the following requisites must be satisfied: (1) the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway; (2) proper indemnity has been paid; (3) the isolation was not due to acts of the proprietor of the dominant estate; and (4) the right of way claimed is at the point least prejudicial to the servient estate.^[18]

The fourth requisite is absent.

We are in full accord with the ruling of the CA when it aptly and judiciously held, to wit:

As provided for under the provisions of Article 650 of the New Civil Code, the easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest. Where there are several tenements surrounding the dominant estate, and the easement may be established on any of them, the one where the way is shortest and will cause the least damage should be chosen. *But if these two circumstances do not concur in a single tenement, as in the instant case, the way which will cause the least damage should be used, even if it will not be the shortest. The criterion of least prejudice to the servient estate must prevail over the criterion of shortest distance.* The court is not bound to establish what is the shortest; a longer way may be established to avoid injury to the servient tenement, such as when there are constructions or walls which can be avoided by a round-about way, as in the case at bar.

As between a right of way that would demolish a fence of strong materials to provide ingress and egress to a public highway and another right of way which although longer will only require a van or vehicle to make a turn, the second alternative should be preferred. Mere