

## THIRD DIVISION

[ G.R. No. 160795, June 27, 2008 ]

**CORINTHIAN GARDENS ASSOCIATION, INC., PETITIONER, VS.  
SPOUSES REYNALDO AND MARIA LUISA TANJANGCO, AND  
SPOUSES FRANK AND TERESITA CUASO, RESPONDENTS.**

### DECISION

**NACHURA, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision<sup>[2]</sup> dated January 31, 2003 in CA-G.R. CV No. 43217, which reversed and set aside the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Quezon City, dated March 30, 1993.

The Antecedents:

Respondents-spouses Reynaldo and Maria Luisa Tanjangco (the Tanjangcos) own Lots 68 and 69 covered by Transfer Certificates of Title (TCT) No. 242245<sup>[4]</sup> and 282961<sup>[5]</sup> respectively, located at Corinthian Gardens Subdivision, Quezon City, which is managed by petitioner Corinthian Gardens Association, Inc. (Corinthian). On the other hand, respondents-spouses Frank and Teresita Cuaso (the Cuasos) own Lot 65 which is adjacent to the Tanjangcos' lots.

Before the Cuasos constructed their house on Lot 65, a relocation survey was necessary. As Geodetic Engineer Democrito De Dios (Engr. De Dios), operating under the business name D.M. De Dios Realty and Surveying, conducted all the previous surveys for the subdivision's developer, Corinthian referred Engr. De Dios to the Cuasos. Before, during and after the construction of the said house, Corinthian conducted periodic ocular inspections in order to determine compliance with the approved plans pursuant to the Manual of Rules and Regulations of Corinthian.<sup>[6]</sup> Unfortunately, after the Cuasos constructed their house employing the services of C.B. Paraz Construction Co., Inc. (C.B. Paraz) as builder, their perimeter fence encroached on the Tanjangcos' Lot 69 by 87 square meters.

No amicable settlement was reached between the parties. Thus, the Tanjangcos demanded that the Cuasos demolish the perimeter fence but the latter failed and refused, prompting the Tanjangcos to file with the RTC a suit against the Cuasos for Recovery of Possession with Damages.<sup>[7]</sup>

Eventually, the Cuasos filed a Third-Party Complaint<sup>[8]</sup> against Corinthian, C.B. Paraz and Engr. De Dios. The Cuasos ascribed negligence to C.B. Paraz for its failure to ascertain the proper specifications of their house, and to Engr. De Dios for his failure to undertake an accurate relocation survey, thereby, exposing them to litigation. The Cuasos also faulted Corinthian for approving their relocation survey

and building plans without verifying their accuracy and in making representations as to Engr. De Dios' integrity and competence. The Cuasos alleged that had Corinthian exercised diligence in performing its duty, they would not have been involved in a boundary dispute with the Tanjangcos. Thus, the Cuasos opined that Corinthian should also be held answerable for any damages that they might incur as a result of such construction.

On March 30, 1993, the RTC rendered a Decision in favor of the Tanjangcos. It ruled that the Cuasos' perimeter wall encroached on the land of the Tanjangcos by 87 square meters. It, however, ruled that the Cuasos were builders in good faith, and gave the Tanjangcos the option to sell and the Cuasos the option to buy the encroaching portion of the land, at a price to be agreed upon by the parties within sixty (60) days from receipt of the said Decision. In the event that the Cuasos were unable and unwilling to purchase the said portion, the perimeter wall should be demolished at the latter's expense. The RTC also ordered the Cuasos to pay monthly rentals of P2,000.00 commencing from the time of the filing of the complaint. The RTC likewise held that C.B. Paraz was grossly negligent in not taking into account the correct boundaries of Cuasos' lot when it constructed the house. It, thus, ordered C.B. Paraz to pay moral and exemplary damages as well as attorney's fees to the Tanjangcos and the Cuasos. The third-party complaint against Corinthian and Engr. De Dios, on the other hand, was dismissed for lack of cause of action.

The Tanjangcos filed a Motion for Reconsideration<sup>[9]</sup> of the said RTC Decision which the RTC, however, denied in its Order<sup>[10]</sup> dated June 28, 1993.

Dissatisfied with the RTC ruling, the Tanjangcos, the Cuasos, and C.B. Paraz all appealed to the CA.

On appeal, the CA reversed and set aside the RTC Decision. It held that the Cuasos acted in bad faith in land-grabbing the 87 square meter-portion of Lot 69 as of April 5, 1989. Correlatively, the CA allowed the Tanjangcos to exercise the rights granted under Articles 449, 450, 451 and 549 of the New Civil Code, which include the right to demand the demolition of the offending perimeter wall after reimbursing the Cuasos the necessary expenses for the preservation of the encroached area. The Cuasos were ordered to pay monthly rentals of P10,000.00 for the use, enjoyment and occupancy of the lot from 1989 up to the time they vacate the property considering the location and category of the same. They were, likewise, ordered to pay the Tanjangcos P100,000.00, as moral damages, P50,000.00 as exemplary damages, and P150,000.00 as attorney's fees. The CA also imposed six percent (6%) interest per annum on all the awards. The Cuasos' appeal against the Tanjangcos, on the other hand, was dismissed for lack of merit. On the third-party complaints, Corinthian, C.B. Paraz and Engr. De Dios were all found negligent in performing their respective duties and so they were ordered to contribute five percent (5%) each, or a total of fifteen percent (15%) to all judgment sums and amounts that the Cuasos shall eventually pay under the decision, also with interest of six percent (6%) per annum.

Only Corinthian filed a Motion for Reconsideration<sup>[11]</sup> of the CA Decision within the 15-day reglementary period. No motion for reconsideration was filed by the Cuasos, C.B. Paraz and/or Engr. De Dios.

About six (6) months later, or on August 12, 2003, the Cuasos filed a Comment/Manifestation<sup>[12]</sup> praying that they be allowed to adopt Corinthian's Motion for Reconsideration.

In its Resolution<sup>[13]</sup> dated November 14, 2003, the CA denied Corinthian's Motion for Reconsideration.

Hence, Corinthian filed the instant Petition for Review on *Certiorari* assailing the CA Decision and Resolution, and impleading the Cuasos as one of the respondents being the third-party plaintiffs in the RTC.

This Court gave due course to Corinthian's petition and required the parties to submit their respective memorandum.<sup>[14]</sup> In compliance, the Cuasos submitted their Memorandum<sup>[15]</sup> and Supplement to Memorandum,<sup>[16]</sup> which were both noted by this Court in its Resolutions dated January 10, 2005<sup>[17]</sup> and February 2, 2005, <sup>[18]</sup> respectively.

In the meantime, the Tanjangcos moved for partial entry of judgment of the CA Decision which was granted by the CA in its Resolution<sup>[19]</sup> dated May 26, 2006, directing the issuance of an Entry of Judgment and a Certification that its Decision dated January 31 2003 has become final and executory with respect to the Cuasos, C.B. Paraz and Engr. De Dios for their failure to file an appeal assailing the said Decision before this Court.

The Tanjangcos then moved for the execution of the judgment against the Cuasos, specifically the demolition of the perimeter fence,<sup>[20]</sup> which was also granted by the RTC in its Order<sup>[21]</sup> dated December 18, 2006.

Other than the filing of an Opposition<sup>[22]</sup> and a Motion for Reconsideration<sup>[23]</sup> before the RTC, the Cuasos prayed for the issuance of a temporary restraining order (TRO) and/or preliminary injunction before this Court to enjoin the demolition of the perimeter fence. They averred that the premature demolition of the alleged encroaching perimeter wall and other improvements will cause grave and irreparable damage to them, because what is sought to be demolished is part of their residence. They claimed that no amount of money will compensate for the damage they stand to suffer should any demolition subsequently prove to be wrongful. They argued that before any execution can be carried out, it is necessary to first determine whether or not Corinthian was negligent in approving the building plan and whether or not it acted in good faith in doing so. Such determination, according to the Cuasos, will in turn determine whether or not they were in good faith in constructing the house.<sup>[24]</sup>

The Tanjangcos opposed the Cuasos' application for TRO. They countered that the only pending matter with this Court is the appeal by Corinthian; hence, the implementation of the January 31, 2003 Decision of the CA against the Cuasos will not preempt the outcome of the said pending incidents. Also, any action taken by this Court on Corinthian's petition would not benefit the Cuasos for they did not appeal the adverse decision against them. Accordingly, they cannot obtain affirmative relief from this Court by reason or on account of the appeal taken by Corinthian. The appeal, they added, is personal to Corinthian. Finally, they argued

that the Cuasos are now estopped from questioning the enforcement of the CA Decision since they issued a manager's check to pay the money judgment.<sup>[25]</sup>

In this Court's Resolution dated July 18, 2007, we denied the Cuasos' application for TRO and/or writ of preliminary injunction for lack of merit.

The denial was based on sound legal principles. It is axiomatic that to be entitled to the injunctive writ, one must show that there exists a right to be protected which is directly threatened by the act sought to be enjoined. Furthermore, there must be a showing that the invasion of the right is material and substantial, that the right of complainant is clear and unmistakable, and that there is an urgent and paramount necessity for the writ to issue in order to prevent serious damage.<sup>[26]</sup>

In the Cuasos' case, their right to injunctive relief had not been clearly and unmistakably demonstrated. They failed to show proof that there is material and substantial invasion of their right to warrant the issuance of an injunctive writ. Indeed, the enforcement of the writ of execution, which would demolish the Cuasos' perimeter fence, is manifestly prejudicial to their interest. However, they possess no clear and unmistakable legal right that merits protection through the writ of preliminary injunction.<sup>[27]</sup> Their right to maintain the said fence had been declared inferior to the Tanjangcos' right to the demolition of the fence, after the CA judgment had become final and executory as to the Cuasos.

It bears stressing that the Cuasos failed to appeal the ruling of the CA. This failure to contest the CA decision before this Court was fatal to their cause. It had the effect of an admission that they indeed acted in bad faith, as they accepted the CA ruling. The decision of the CA, therefore, became binding and final as to them.<sup>[28]</sup> As a matter of fact, the CA already issued a partial entry of judgment against the Cuasos.

An injunction to stay a final and executory decision is unavailing except only after a showing that facts and circumstances exist which would render execution unjust or inequitable, or that a change in the situation of the parties occurred. Here, no such exception exists as shown by the facts earlier narrated.<sup>[29]</sup>

While it is true that this Court noted the Memorandum and Supplemental Memorandum filed by the Cuasos, such notation was made only insofar as Corinthian made them respondents in this petition. This Court cannot grant to the Cuasos any affirmative relief as they did not file a petition questioning the CA ruling. Consequently, the Decision of the CA holding that the Cuasos acted in bad faith and that the perimeter fence may now be demolished cannot be put in issue by the Cuasos. It is a fundamental principle that a party who does not appeal, or file a petition for *certiorari*, is not entitled to any affirmative relief.<sup>[30]</sup> An appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment, but he cannot seek modification or reversal of the judgment or claim affirmative relief unless he has also appealed.<sup>[31]</sup> This applies to C.B. Paraz and Engr. De Dios who likewise failed to assail the aforementioned CA Decision.

With this matter put to rest, we now go to the main issues raised by Corinthian, the sole petitioner in this case, to wit:

a) Whether or not there is legal basis for the Court of Appeals to hold petitioner Corinthian Gardens Association, Inc. liable to pay 5% of the judgment money to Sps. Tanjangco on account of the encroachment made by Sps. Cuaso[; and]

b) Whether or not the Court of Appeals has legal basis to increase unilaterally and without proof the amount prayed for in the Complaint, *i.e.*, P2,000.00, as reasonable compensation for the use and enjoyment of the portion of the lot encroached upon, to P10,000.00.<sup>[32]</sup>

Corinthian claims that the approval of the building plan of the Cuasos was not tainted with negligence as it did not approve the survey relocation plan but merely the architectural, structural and sanitary plans for Cuasos' house; that the purpose of the said approval is not to ensure that the house to be erected on a particular lot is constructed within its boundaries but only to ensure compliance with the Manual of Rules and Regulations; that while Corinthian conducts actual site inspections, the inspection and approval of the building plans are limited to "table inspection" only; that the survey relocation plan was never submitted for Corinthian's approval; that the acceptance of the builder's bond did not make Corinthian automatically liable for the encroachment and for damages; and that Corinthian approved the building plan with the good faith and due diligence required under the circumstances. It, thus, concludes that it cannot be held liable to pay five percent (5%) of the money judgment to the Tanjangcos on account of the encroachment made by the Cuasos. Likewise, it finds no legal basis for the CA to unilaterally increase the amount of the adjudged rent from P2,000.00 to P10,000.00 which was not prayed for by the Tanjangcos in their complaint and in the absence of evidence adduced by the parties.<sup>[33]</sup>

On the other hand, the Tanjangcos stand by the ruling of the CA and opine that Corinthian was negligent in approving the building plan of the Cuasos. They submit that Corinthian's claim that it merely conducts "table inspections" of buildings further bolsters their argument that Corinthian was negligent in conveniently and unilaterally restricting and limiting the coverage of its approval, contrary to its own Manual of Rules and Regulations; that the acceptance of a builder's bond does not automatically make Corinthian liable but the same affirms the fact that a homeowner can hold it liable for the consequences of the approval of a building plan; and that Corinthian, by regularly demanding and accepting membership dues, must be wary of its responsibility to protect the rights and interests of its members. Lastly, the Tanjangcos contend that a court can take judicial notice of the general increase in the rentals of real estate, as in this case, where the CA considered the value of their lot in the "posh-and-swank" Corinthian Gardens Subdivision and the fact that they were deprived of it for almost two decades. The Tanjangcos pray that this Court sustain the ruling of the CA.<sup>[34]</sup>

The instant case is obviously one for tort, as governed by Article 2176 of the Civil Code, which provides:

ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.