582 Phil. 183

# THIRD DIVISION

# [ G.R. No. 165952, July 28, 2008 ]

## ANECO REALTY AND DEVELOPMENT CORPORATION, PETITIONER, VS. LANDEX DEVELOPMENT CORPORATION, RESPONDENT.

## D E C I S I O N

**REYES, R.T., J.:**

THIS is a simple case of a neighbor seeking to restrain the landowner from fencing his own property. The right to fence flows from the right of ownership. Absent a clear legal and enforceable right, We will not unduly restrain the landowner from exercising an inherent proprietary right.

Before Us is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) affirming the Order[2] of the Regional Trial Court (RTC) dismissing the complaint for injunction filed by petitioner Aneco Realty and Development Corporation (Aneco) against respondent Landex Development Corporation (Landex).

### Facts

Fernandez Hermanos Development, Inc. (FHDI) is the original owner of a tract of land in San Francisco Del Monte, Quezon City. FHDI subdivided the land into thirty-nine (39) lots.[3] It later sold twenty-two (22) lots to petitioner Aneco and the remaining seventeen (17) lots to respondent Landex.[4]

The dispute arose when Landex started the construction of a concrete wall on one of its lots. To restrain construction of the wall, Aneco filed a complaint for injunction[5] with the RTC in Quezon City. Aneco later filed two (2) supplemental complaints seeking to demolish the newly-built wall and to hold Landex liable for two million pesos in damages.[6]

Landex filed its Answer[7] alleging, among others, that Aneco was not deprived access to its lots due to the construction of the concrete wall. Landex claimed that Aneco has its own entrance to its property along Miller Street, Resthaven Street, and San Francisco del Monte Street. The Resthaven access, however, was rendered inaccessible when Aneco constructed a building on said street. Landex also claimed that FHDI sold ordinary lots, not subdivision lots, to Aneco based on the express stipulation in the deed of sale that FHDI was not interested in pursuing its own subdivision project.

### RTC Disposition

On June 19, 1996, the RTC rendered a Decision[8] granting the complaint for

injunction, disposing as follows:

> Wherefore, premises considered, and in the light aforecited decision of the Supreme Court judgment is hereby rendered in favor of the plaintiff and the defendant is hereby ordered:
>
> 1. To stop the completion of the concrete wall and excavation of the road lot in question and if the same is already completed, to remove the same and to return the lot to its original situation;
>
> 2. To pay actual and compensatory damage to the plaintiff in the total amount of P50,000.00;
>
> 3. To pay attorney's fees in the amount of P20,000.00;
>
> 4. To pay the cost.
>
> SO ORDERED.[9]

Landex moved for reconsideration.[10] Records reveal that Landex failed to include a notice of hearing in its motion for reconsideration as required under Section 5, Rule 15 of the 1997 Rules of Civil Procedure. Realizing the defect, Landex later filed a motion[11] setting a hearing for its motion for reconsideration. Aneco countered with a motion for execution[12] claiming that the RTC decision is already final and executory.

Acting on the motion of Landex, the RTC set a hearing on the motion for reconsideration on August 28, 1996. Aneco failed to attend the slated hearing. The RTC gave Aneco additional time to file a comment on the motion for reconsideration. [13]

On March 13, 1997, the RTC issued an order[14] denying the motion for execution of Aneco.

On March 31, 1997, the RTC issued an order granting the motion for reconsideration of Landex and dismissing the complaint of Aneco. In granting reconsideration, the RTC stated:

> In previously ruling for the plaintiff, this Court anchored its decision on the ruling of the Supreme Court in the case of "*White Plains Association vs. Legaspi*, 193 SCRA 765," wherein the issue involved was the ownership of a road lot, in an existing, fully developed and authorized subdivision, which after a second look, is apparently inapplicable to the instant case at bar, simply because the property in question never did exist as a subdivision. Since, the property in question never did exist as a subdivision, the limitations imposed by Section 1 of Republic Act No. 440, that no portion of a subdivision road lot shall be closed without the approval of the Court is clearly in appropriate to the case at bar.
>
> The records show that the plaintiff's property has access to a public road as it has its own ingress and egress along Miller St.; That plaintiff's property is not isolated as it is bounded by Miller St. and Resthaven St. in

> San Francisco del Monte, Quezon City; that plaintiff could easily make an access to a public road within the bounds and limits of its own property; and that the defendant has not yet been indemnified whatsoever for the use of his property, as mandated by the Bill of rights. The foregoing circumstances, negates the alleged plaintiffs right of way.[15]

Aneco appealed to the CA.[16]

**CA Disposition**

On March 31, 2003, the CA rendered a Decision[17] affirming the RTC order, disposing as follows:

> WHEREFORE, in consideration of the foregoing, the instant appeal is perforce *dismissed*. Accordingly, the order dated 31 March 1996 is hereby *affirmed.*
>
> SO ORDERED.[18]

In affirming the RTC dismissal of the complaint for injunction, the CA held that Aneco knew at the time of the sale that the lots sold by FHDI were not subdivision units based on the express stipulation in the deed of sale that FHDI, the seller, was no longer interested in pursuing its subdivision project, thus:

> The subject property ceased to be a road lot when its former owner (Fernandez Hermanos, Inc.) sold it to appellant Aneco not as subdivision lots and without the intention of pursuing the subdivision project. The law in point is Article 624 of the New Civil Code, which provides:
>
> > Art. 624. The existence of an apparent sign of easement between two estates, established or maintained by the owner of both, shall be considered, should either of them be alienated, as a title in order that the easement may continue actively and passively, unless, at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them, or the sign aforesaid should be removed before the execution of the deed. This provision shall also apply in case of the division of a thing owned in common by two or more persons.
>
> Viewed from the aforesaid law, there is no question that the law allows the continued use of an apparent easement should the owner alienate the property to different persons. It is noteworthy to emphasize that the lot in question was provided by the previous owner (Fernandez Hermanos, Inc.) as a *road lot* because of its intention to convert it into a *subdivision project*. The previous owner even applied for a development permit over the subject property. However, when the twenty-two (22) lots were sold to appellant Aneco, it was very clear from the seller's deed of sale that the lots sold *ceased to be subdivision lots*. The seller even warranted that it shall undertake to extend all the necessary assistance for the *consolidation of the subdivided lots*, including the execution of the requisite manifestation before the appropriate government agencies that the *seller is no longer interested in pursuing the subdivision project*. In

> fine, appellant Aneco knew from the very start that at the time of the sale, the 22 lots sold to it were not intended as subdivision units, although the titles to the different lots have yet to be consolidated. Consequently, the easement that used to exist on the subject lot ceased when appellant Aneco and the former owner agreed that the lots would be consolidated and would no longer be intended as a subdivision project.
>
> Appellant Aneco insists that it has the intention of continuing the subdivision project earlier commenced by the former owner. It also holds on to the previous development permit granted to Fernandez Hermanos, Inc. The insistence is futile. Appellant Aneco did not acquire any right from the said previous owner since the latter itself expressly stated in their agreement that it has no more intention of continuing the subdivision project. If appellant desires to convert its property into a subdivision project, it has to apply in its own name, and must have its own provisions for a road lot.[19]

Anent the issue of compulsory easement of right of way, the CA held that Aneco failed to prove the essential requisites to avail of such right, thus:

> An easement involves an abnormal restriction on the property of the servient owner and is regarded as a charge or encumbrance on the servient owner and is regarded as a charge or encumbrance on the servient estate (*Cristobal v. CA,* 291 SCRA 122). The essential requisites to be entitled to a compulsory easement of way are: 1) that the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway; 2) that proper indemnity has been paid; 3) that the isolation was not due to acts of the proprietor of the dominant estate; 4) that the right of way claimed is at a point least prejudicial to the servient estate and in so far as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest (*Cristobal v. Court of Appeals,* 291 SCRA 122).
>
> An in depth examination of the evidence adduced and offered by appellant Aneco, showed that it had failed to prove the existence of the aforementioned requisites, as the burden thereof lies upon the appellant Aneco.[20]

Aneco moved for reconsideration but its motion was denied.[21] Hence, the present petition or appeal by *certiorari* under Rule 45.

**Issues**

Petitioner Aneco assigns quadruple errors to the CA in the following tenor:

A.

> THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING PETITIONER'S APPEAL AND SUSTAINING THE TRIAL COURT'S *ORDER* DATED 31 MARCH 1997 GRANTING RESPONDENT'S *MOTION FOR RECONSIDERATION*

WHICH IS FATALLY DEFECTIVE FOR LACK OF NOTICE OF HEARING.

B.

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S *ORDER* WHICH GAVE FULL WEIGHT AND CREDIT TO THE MISLEADING AND ERRONEOUS CERTIFICATION ISSUED BY GILDA E. ESTILO WHICH SHE LATER EXPRESSLY AND CATEGORICALLY RECANTED BY WAY OF HER *AFFIDAVIT*.

C.

THE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE LIBERAL CONSTRUCTION OF THE RULES IN ORDER TO SUSTAIN THE TRIAL COURT'S *ORDER* DATED 31 MARCH 1997.

D.

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S *ORDER* THAT MADE NO PRONOUNCEMENTS AS TO COSTS, AND IN DISREGARDING THE MERIT OF THE PETITIONER'S CAUSE OF ACTION. [22]

## Our Ruling

The petition is without merit.

Essentially, two (2) issues are raised in this petition. The first is the procedural issue of whether or not the RTC and the CA erred in liberally applying the rule on notice of hearing under Section 5, Rule 15 of the 1997 Rules of Civil Procedure. The second is the substantive issue of whether or not Aneco may enjoin Landex from constructing a concrete wall on its own property.

We shall discuss the twin issues sequentially.

***Strict vs. Liberal Construction of Procedural Rules; Defective motion was cured when Aneco was given an opportunity to comment on the motion for reconsideration.***

Section 5, Rule 15 of the 1997 Rules of Civil Procedure[23] requires a notice of hearing for a contested motion filed in court. Records disclose that the motion for reconsideration filed by Landex of the RTC decision did not contain a notice of hearing. There is no dispute that the motion for reconsideration is defective. The RTC and the CA ignored the procedural defect and ruled on the substantive issues raised by Landex in its motion for reconsideration. The issue before Us is whether or not the RTC and the CA correctly exercised its discretion in ignoring the procedural defect. Simply put, the issue is whether or not the requirement of notice of hearing should be strictly or liberally applied under the circumstances.

Aneco bats for strict construction. It cites a litany of cases which held that notice of