

## THIRD DIVISION

[ G.R. NO. 159224, January 20, 2006 ]

**JOSE D. ONTIMARE, JR., AND RENE D. ONTIMARE, AS SONS/HEIRS, SUBSTITUTED FOR THEIR DECEASED FATHER AND THE ORIGINAL PARTY JOSE M. ONTIMARE, SR., PETITIONERS, VS. SPS. RENATO AND ROSARIO ELEP, RESPONDENTS.**

### DECISION

#### QUISUMBING, J.:

For review on certiorari is the **Decision**,<sup>[1]</sup> dated July 18, 2003, of the Court of Appeals in CA-G.R. CV No. 69138, affirming with modifications the **Summary Judgment**<sup>[2]</sup> dated July 11, 2000 of the Regional Trial Court of Quezon City, Branch 77, in Civil Case No. Q-96-28991. The RTC ordered Jose M. Ontimare, Sr. to pay respondents actual and compensatory damages in the amount of P75,000 per month from July 1996 to September 1998, exemplary damages amounting to P50,000, attorney's fees in the amount of P30,000, and the sum of P150,000 as reimbursement for the damage on respondents' wood parquet floors, wall paintings and ceiling.

The facts, as borne by the records, are as follows:

Ontimare Sr. and respondents are neighbors in Hyacinth Street, Roxas District, Quezon City. Respondents wanted to build a four-door, two-storey apartment on their lot at No. 74 Hyacinth Street and applied for a building permit with the Building Official of Quezon City sometime in December 1995.

Ontimare Sr. owned the adjoining house and adjacent lot on No. 72 Hyacinth Street. His terrace extends to the boundary between his property and respondents'. On December 3, 1995, respondents wrote Ontimare Sr. a letter seeking his written consent to the construction of a firewall adjacent to his existing firewall.

Instead of consenting, on December 20, 1995, Ontimare Sr. filed a Complaint with the Building Official asking that the request for a building permit be withheld since a firewall would adversely affect the ventilation and market value of his property.

Despite a building permit issued to respondents on January 8, 1996,<sup>[3]</sup> a Cease and Desist Order<sup>[4]</sup> to stop the construction of the four-door apartment was issued on January 12, 1996, as a result of the Complaint of Ontimare Sr.

However, when respondents wrote the City Engineer and explained they were constructing a one-sided firewall within their property, the Cease and Desist Order was forthwith lifted on January 16, 1996.

On January 26, 1996, the complaint of Ontimare Sr. was dismissed. He appealed to

the City Mayor, who ordered an investigation on the matter.

On February 2, 1996, Ontimare Sr. filed a Notarial Prohibition.

After hearings conducted on June 18 and 25, 1996, the Building Official dismissed the complaint on July 11, 1996 and ordered Ontimare Sr. to make the adjustments in the construction of his house.<sup>[5]</sup> Respondents were issued a new building permit on July 16, 1996.<sup>[6]</sup>

Meanwhile, the day before, on July 15, 1996, while respondents' workers were plastering and water-proofing the firewall, Ontimare Sr. fired his shotgun, threatening to kill anyone who would enter his property and work on respondents' construction.<sup>[7]</sup> As a result, a portion of the firewall remained unfinished. According to respondents, water seeped in the building and damaged the sanding, the wood parquet floors and the ceiling. Respondents filed an action for damages with application for preliminary injunction and restraining order against Ontimare Sr. before the Regional Trial Court of Quezon City, Branch 77.

After trial, Ontimare Sr. moved for a summary judgment while the respondents moved for the resolution of the case on the merits. The RTC issued the summary judgment, the dispositive portion of which reads,

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs, and the defendant is hereby ordered to pay the plaintiffs:

1. Actual and compensatory damages in the form of unrealized income and bank amortization interest in the amount of P75,000.00 per month from July, 1996 to September, 1998;
2. The amount of P150,000.00 as reimbursement for the damage on the wood parquet floors, wall paintings and ceiling;
3. P50,000.00 as and by way of exemplary damages; and
4. P30,000.00 as and by way of attorney's fees.

SO ORDERED.<sup>[8]</sup>

On appeal, the Court of Appeals affirmed the assailed summary judgment with modification,

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs, and the defendant is hereby ordered to pay the plaintiffs:

1. Compensatory damages in the form of unrealized income in the total amount of Two Hundred Eighty-eight Thousand Pesos (P288,000.00) for Apartments A, B and C, and bank amortization interest from July 1996 to July 1997 in the total amount of Three Hundred Forty-four Thousand Eight Hundred Seventy-five Pesos and 74/100 centavos (P344,875.74).;

2. The amount of P150,000.00 as reimbursement for the damage on the wood parquet floors, wall paintings and ceiling;
3. P50,000.00 as and by way of exemplary damages; and
4. P30,000 as and by way of attorney's fees.

SO ORDERED.<sup>[9]</sup>

Meanwhile, while the case was on appeal, Ontimare Sr. died. He was survived by his two sons, petitioners herein, who now come to us on a petition for review on certiorari on the ground that:

1. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN MAINTAINING THE TRIAL COURT'S SUMMARY JUDGMENT AGAINST MOVANT DEFENDANT
2. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN OVERLOOKING MATERIAL FACTS TO FIND DEFENDANT SOLELY LIABLE FOR THE DELAY IN THE PLASTERING OF THE FIREWALL
3. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT HOLDING THAT THE LOWER COURT ERRED IN CONSIDERING DEFENDANT'S MOTION FOR RECONSIDERATION AS A MERE SCRAP OF PAPER WHICH COULD NOT BE ACTED UPON BY THE COURT
4. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AWARDING UNEARNED RENT AND REIMBURSEMENT OF BANK INTEREST AMORTIZATION FOR ANY PERIOD AFTER THE REWORK ON THE FIREWALL HAD BEEN COMPLETED IN SEPTEMBER 1996
5. THE COURT OF APPEALS COMMITTED A PATENT ERROR IN GRANTING DAMAGES EQUIVALENT TO ELEVEN MONTHS WHEN THE LIABILITY PERIOD IT COMPUTED ONLY ADDED UP TO TEN MONTHS
6. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN AWARDING EXEMPLARY DAMAGES WITHOUT ANY BAD FAITH ON THE PART OF DEFENDANT<sup>[10]</sup>

Simply put, there are two issues for resolution, namely (1) Is the summary judgment rendered by the trial court proper? (2) Are petitioners liable for the damages awarded?

Anent the *first* issue, petitioners argue that summary judgment may issue only in favor of a moving party and only when there is no genuine issue on any material fact, except for the amount of damages. Petitioners insist that the summary judgment in this case was rendered against the movant and despite the existence of disputed facts.

On the other hand, respondents counter that Ontimare Sr., in moving for summary judgment indicated that he did not want a *de riguer* trial. Further, respondents argue that he waived his right to question the said summary judgment when he did not object to respondents' motion that the case be resolved on its merits.