

SECOND DIVISION

[G.R. No. 125683, March 02, 1999]

EDEN BALLATAN AND SPS. BETTY MARTINEZ AND CHONG CHY LING, PETITIONERS, VS. COURT OF APPEALS, GONZALO GO, WINSTON GO, LI CHING YAO, ARANETA INSTITUTE OF AGRICULTURE AND JOSE N. QUEDDING, RESPONDENTS.

D E C I S I O N

PUNO, J.:

This is a petition for review on *certiorari* of the decision of the Court of Appeals dated March 25, 1996 in CA-G.R. CV No. 32472 entitled "Eden Ballatan, *et. al.*, plaintiffs-appellees v. Gonzalo Go and Winston Go, appellants and third-party plaintiffs-appellants v. Li Ching Yao, *et.al.*, third-party defendants."^[1]

The instant case arose from a dispute over forty-two (42) square meters of residential land belonging to petitioners. The parties herein are owners of adjacent lots located at Block No. 3, Poinsettia Street, Araneta University Village, Malabon, Metro Manila. **Lot No. 24, 414** square meters in area, is registered in the name of petitioners Eden Ballatan and spouses Betty Martinez and Chong Chy Ling.^[2] **Lots Nos. 25 and 26**, with an area of 415 and 313 square meters respectively, are registered in the name of respondent Gonzalo Go, Sr.^[3] On Lot No. 25, respondent Winston Go, son of Gonzalo Go, Sr., constructed his house. Adjacent to Lot No. 26 is **Lot No. 27**, 417 square meters in area, and is registered in the name of respondent Li Ching Yao.^[4]

In 1985, petitioner Ballatan constructed her house on Lot No. 24. During the construction, she noticed that the concrete fence and side pathway of the adjoining house of respondent Winston Go encroached on the entire length of the eastern side of her property.^[5] Her building contractor informed her that the area of her lot was actually less than that described in the title. Forthwith, Ballatan informed respondent Go of this discrepancy and his encroachment on her property. Respondent Go, however, claimed that his house, including its fence and pathway, were built within the parameters of his father's lot; and that this lot was surveyed by Engineer Jose Quedding, the authorized surveyor of the Araneta Institute of Agriculture (AIA), the owner-developer of the subdivision project.

Petitioner Ballatan called the attention of the AIA to the discrepancy of the land area in her title and the actual land area received from them. The AIA authorized another survey of the land by Engineer Jose N. Quedding.

In a report dated February 28, 1985, Engineer Quedding found that the lot area of petitioner Ballatan was less by a few meters and that of respondent Li Ching Yao, which was three lots away, increased by two (2) meters. Engineer Quedding

declared that he made a verification survey of Lots Nos. 25 and 26 of respondents Go in 1983 and allegedly found the boundaries to have been in their proper position. He, however, could not explain the reduction in Ballatan's area since he was not present at the time respondents Go constructed their boundary walls.^[6]

On June 2, 1985, Engineer Quedding made a third relocation survey upon request of the parties. He found that Lot No. 24 lost approximately 25 square meters on its eastern boundary, that Lot No. 25, although found to have encroached on Lot No. 24, did not lose nor gain any area; that Lot No. 26 lost some three (3) square meters which, however, were gained by Lot No. 27 on its western boundary.^[7] In short, Lots Nos. 25, 26 and 27 moved westward to the eastern boundary of Lot No. 24.

On the basis of this survey, on June 10, 1985, petitioner Ballatan made a written demand on respondents Go to remove and dismantle their improvements on Lot No. 24. Respondents Go refused. The parties, including Li Ching Yao, however, met several times to reach an agreement on the matter.

Failing to agree amicably, petitioner Ballatan brought the issue before the barangay. Respondents Go did not appear. Thus, on April 1, 1986, petitioner Ballatan instituted against respondents Go Civil Case No. 772-MN for recovery of possession before the Regional Trial Court, Malabon, Branch 169. The Go's filed their "Answer with Third-Party Complaint" impleading as third-party defendants respondents Li Ching Yao, the AIA and Engineer Quedding.

On August 23, 1990, the trial court decided in favor of petitioners. It ordered the Go's to vacate the subject portion of Lot No. 24, demolish their improvements and pay petitioner Ballatan actual damages, attorney's fees and the costs of the suit. It dismissed the third-party complaint against: (1) AIA after finding that the lots sold to the parties were in accordance with the technical description and verification plan covered by their respective titles; (2) Jose N. Quedding, there being no privity of relation between him and respondents Go and his erroneous survey having been made at the instance of AIA, not the parties; and (3) Li Ching Yao for failure to prove that he committed any wrong in the subject encroachment.^[8] The court made the following disposition:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants, ordering the latter:

1. To demolish and remove all improvements existing and encroaching on plaintiff's lot;
2. To clear, vacate and deliver possession of the encroached area to the plaintiffs;
3. To pay plaintiffs jointly and severally the following:
 - a) P7,800.00 for the expenses paid to the surveyors;
 - b) P5,000.00 for plaintiffs' transportation;

4. To pay plaintiffs, jointly and severally, attorney's fees equivalent to 25% of the current market value of the subject matter in litigation at the time of execution; and
5. To pay the costs of suit.

The third-party complaint filed by third-party plaintiff Gonzalo Go and Winston Go against third-party defendants Araneta Institute of Agriculture, Jose N. Quedding and Li Ching Yao is hereby DISMISSED, without pronouncement as to costs.

SO ORDERED."

Respondents Go appealed. On March 25, 1996, the Court of Appeals modified the decision of the trial court. It affirmed the dismissal of the third-party complaint against the AIA but reinstated the complaint against Li Ching Yao and Jose Quedding. Instead of ordering respondents Go to demolish their improvements on the subject land, the appellate court ordered them to pay petitioner Ballatan, and respondent Li Ching Yao to pay respondents Go, a reasonable amount for that portion of the lot which they encroached, the value to be fixed at the time of taking. It also ordered Jose Quedding to pay respondents Go attorney's fees of P5,000.00 for his erroneous survey. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, the decision appealed from is hereby AFFIRMED insofar as the dismissal of the third-party complaint against Araneta Institute of Agriculture is concerned but modified in all other aspects as follows:

- 1) Defendants-appellants are hereby ordered to pay plaintiffs-appellees the reasonable value of the forty-two (42) square meters of their lot at the time of its taking;
- 2) Third-party defendant Li Ching Yao is hereby ordered to pay defendants-appellants the reasonable value of the thirty-seven (37) square meters of the latter's lot at the time of its taking; and
- 3) Third-party defendant Jose N. Quedding is hereby ordered to pay to defendants-appellants the amount of P5,000.00. as attorney's fees.

LET THE RECORD of the case be remanded to the Regional Trial Court of Malabon for further proceedings and reception of evidence for the determination of the reasonable value of Lots Nos. 24 and 26.

SO ORDERED."^[9]

Hence, this petition. Petitioners allege that:

"RESPONDENT COURT OF APPEALS ERRED ON QUESTIONS OF LAW AND GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN:

1. IT APPLIED EQUITY OR EQUITABLE SOLUTIONS TO THE INSTANT CASE IN UTTER DISREGARD AND IN VIOLATION OR GROSS

IGNORANCE OF EXISTING LAWS AND JURISPRUDENCE VESTING BASIC PROPERTY RIGHTS TO HEREIN PETITIONERS. RESPONDENT COURT HAS NO POWER TO APPLY/USE EQUITY IN THE PRESENCE OF EXISTING LAWS TO THE CONTRARY.

2. UNDER THE GUISE OF APPLYING EQUITY BUT IN EFFECT A VERY APPARENT PARTIALITY AND FAVOR TO RESPONDENTS GO, IT ORDERED PAYMENT OF THE ENCROACHED AREA AT THE VALUE AT THE TIME OF ITS TAKING AND NOT THE VALUE AT THE TIME OF PAYMENT, THEREBY ENRICHING THE GO'S BUT DEPRIVING PETITIONERS OF THE FRUITS OR INCREASE IN VALUE OF THEIR PROPERTY TO WHICH THEY ARE ENTITLED UNDER THE LAW AS THE REGISTERED OWNERS WITH TORRENS TITLE IN THEIR NAMES.
3. WHEN IT DID NOT DISMISS THE THIRD-PARTY COMPLAINT DUE TO NON-PAYMENT OF ANY FILING OR DOCKET FEE.
4. WHEN IT DENIED PETITIONERS THE RECOVERY OF THE NECESSARY EXPENSES IN PROTECTING THEIR RIGHTS IN THIS CASE."^[10]

Petitioners question the admission by respondent Court of Appeals of the third-party complaint by respondents Go against the AIA, Jose Quedding and Li Ching Yao. Petitioners claim that the third-party complaint should not have been considered by the Court of Appeals for lack of jurisdiction due to third-party plaintiffs' failure to pay the docket and filing fees before the trial court.

The third-party complaint in the instant case arose from the complaint of petitioners against respondents Go. The complaint filed was for *accion publiciana*, i.e., the recovery of possession of real property which is a real action. The rule in this jurisdiction is that when an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees.^[11] In real actions, the docket and filing fees are based on the value of the property and the amount of damages claimed, if any.^[12] If the complaint is filed but the fees are not paid at the time of filing, the court acquires jurisdiction upon full payment of the fees within a reasonable time as the court may grant, barring prescription.^[13] Where the fees prescribed for the real action have been paid but the fees of certain related damages are not, the court, although having jurisdiction over the real action, may not have acquired jurisdiction over the accompanying claim for damages.^[14] Accordingly, the court may expunge those claims for damages, or allow, on motion, a reasonable time for amendment of the complaint so as to allege the precise amount of damages and accept payment of the requisite legal fees.^[15] If there are unspecified claims, the determination of which may arise after the filing of the complaint or similar pleading, the additional filing fee thereon shall constitute a lien on the judgment award.^[16] The same rule also applies to third-party claims and other similar pleadings.^[17]

In the case at bar, the third-party complaint filed by respondents Go was incorporated in their answer to the complaint. The third-party complaint sought the

same remedy as the principal complaint but added a prayer for attorney's fees and costs without specifying their amounts, thus:

"ON THE THIRD PARTY COMPLAINT

1. That summons be issued against Third-Party Defendants Araneta Institute of Agriculture, Jose N. Quedding and Li Ching Yao;
2. That after hearing, they be sentenced to indemnify the Third-Party Plaintiffs for whatever is adjudged against the latter in favor of the Plaintiffs;
3. That Third-Party Defendants be ordered to pay attorney's fees as may be proved during trial;
4. That Third-Party Defendants be ordered to pay the costs.

Other just and equitable reliefs are also prayed for."^[18]

The Answer with Third-Party Complaint was admitted by the trial court without the requisite payment of filing fees, particularly on the Go's prayer for damages.^[19] The trial court did not award the Go's any damages. It dismissed the third-party complaint. The Court of Appeals, however, granted the third-party complaint in part by ordering third-party defendant Jose N. Quedding to pay the Go's the sum of P5,000.00 as attorney's fees.

Contrary to petitioners' claim, the Court of Appeals did not err in awarding damages despite the Go's failure to specify the amount prayed for and pay the corresponding additional filing fees thereon. The claim for attorney's fees refers to damages arising **after** the filing of the complaint against the Go's. The additional filing fee on this claim is deemed to constitute a lien on the judgment award.^[20]

The Court of Appeals found that the subject portion is actually forty-two (42) square meters in area, not forty-five (45), as initially found by the trial court; that this forty-two (42) square meter portion is on the entire eastern side of Lot No. 24 belonging to petitioners; that on this said portion is found the concrete fence and pathway that extends from respondent Winston Go's house on adjacent Lot No. 25; that inclusive of the subject portion, respondents Go did not gain nor lose any portion of Lots Nos. 25 and 26; that instead, Lot No. 27, on which respondent Li Ching Yao built his house, encroached on the land of respondents Go, gaining in the process thirty-seven (37) square meters of the latter's land.^[21]

We hold that the Court of Appeals correctly dismissed the third-party complaint against AIA. The claim that the discrepancy in the lot areas was due to AIA's fault was not proved. The appellate court, however, found that it was the erroneous survey by Engineer Quedding that triggered these discrepancies. And it was this survey that respondent Winston Go relied upon in constructing his house on his father's land. He built his house in the belief that it was entirely within the parameters of his father's land. In short, respondents Go had no knowledge that they encroached on petitioners' lot. They are deemed builders in good faith^[22] until the time petitioner Ballatan informed them of their encroachment on her property.^[23]