



Republic of the Philippines
 Supreme Court
 Manila

FIRST DIVISION

**SPS. FERNANDO VERGARA
 and HERMINIA VERGARA,**

Petitioners,

G.R. No. 193659

Present:

- versus -

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, JJ.

**ERLINDA
 SONKIN,**

TORRECAMPO

Respondent.

Promulgated:

JUN 15 2015

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated February 24, 2010 and the Resolution³ dated September 2, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 89357, which reversed and set aside the Decision⁴ dated January 4, 2007 of the Regional Trial Court of Malolos City, Bulacan, Branch 19 (RTC) in Civil Case. No. 900-M-2002 and entered a new one in its stead.

The Facts

Petitioners-spouses Fernando Vergara and Herminia Vergara (Sps. Vergara) and Spouses Ronald Mark Sonkin and Erlinda Torrecampo Sonkin

¹ *Rollo*, pp. 11-18. Petitioners also filed an amended petition on December 12, 2011 (id. at 160-169) which was noted by the Court in a Resolution dated January 30, 2012 (id. at 280-281).

² Id. at 21-34. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Jose C. Reyes, Jr. and Amy C. Lazaro-Javier concurring.

³ Id. at 117-118.

⁴ Id. at 60-72. Penned by Presiding Judge Renato C. Francisco.

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(Sps. Sonkin) are adjoining landowners in Poblacion, Norzagaray, Bulacan. In view of the geographical configuration of the adjoining properties, the property owned by Sps. Sonkin (Sonkin Property) is slightly lower in elevation than that owned by Sps. Vergara (Vergara Property).⁵

When Sps. Sonkin bought the Sonkin Property sometime in 1999, they raised the height of the partition wall and caused the construction of their house thereon. The house itself was attached to the partition wall such that a portion thereof became part of the wall of the master's bedroom and bathroom.⁶

Sometime in 2001, Sps. Vergara levelled the uneven portion of the Vergara Property by filling it with gravel, earth, and soil. As a result, the level of the Vergara Property became even higher than that of the Sonkin Property by a third of a meter. Eventually, Sps. Sonkin began to complain that water coming from the Vergara Property was leaking into their bedroom through the partition wall, causing cracks, as well as damage, to the paint and the wooden parquet floor. Sps. Sonkin repeatedly demanded that Sps. Vergara build a retaining wall on their property in order to contain the landfill that they had dumped thereon, but the same went unheeded.⁷ Hence, Sps. Sonkin filed the instant complaint for damages and injunction with prayer for preliminary mandatory injunction and issuance of a temporary restraining order against Sps. Vergara, as well as Sps. Rowena Santiago and Harold Santiago, Dolores Vergara-Orbistondo, and Rosario Vergara-Payumo, the other possessors of the Vergara Property.⁸

In defense, Sps. Vergara, in their Answer with Compulsory Counterclaim,⁹ claimed that Sps. Sonkin's act of raising the partition wall made the same susceptible to breakage, which therefore cannot be attributed to them (Sps. Vergara). They likewise claimed that when they levelled their own property by filling it with gravel and soil, they left a distance of one (1) meter from the partition wall such that the edge of the landfill did not breach it, asserting further that there was no valid and legal reason why they should be enjoined from exercising their proprietary rights.¹⁰

During the trial, Sps. Sonkin presented the testimony of Engineer Ma. Victoria Mendoza, considered an expert witness, who categorically declared that in view of the sloping terrain and the Sonkin Property being lower in elevation than that of the Vergara Property, the Sps. Vergara were then duty bound to provide a retaining wall because they were the ones who caused the

⁵ Id. at 22.

⁶ Id.

⁷ See id. at 22-23.

⁸ See Complaint dated December 9, 2002; id. at 35-41.

⁹ See Answer with Compulsory Counterclaim dated January 10, 2003; id. at 48-52.

¹⁰ See id. at 23 and 50.

landfill, citing Section 1202¹¹ of Presidential Decree No. 1096,¹² otherwise known as the “National Building Code of the Philippines” (National Building Code). Likewise, citing Sections 3.2.1, 3.2.3, and 3.2.4 of Section 3.2, Rule XV of the original Implementing Rules and Regulations¹³ of the National Building Code, she explained that it was Sps. Vergara’s duty to provide safety requirements for the landfill they made on their property to prevent any danger to life or property. Moreover, Sps. Vergara failed to provide a sewerage line to divert the flow of the water into the adjoining property, in violation of Section 901¹⁴ of the National Building Code.¹⁵

Finally, the Provincial Engineer of Bulacan, Romeo S. Castro, who was appointed as Commissioner by the RTC to conduct his own investigation, likewise found, *inter alia*, that the introduction of filling materials on the Vergara Property has “affected” the house of Sps. Sonkin.¹⁶

The RTC Ruling

In a Decision¹⁷ dated January 4, 2007, the RTC found Sps. Vergara civilly liable to Sps. Sonkin for damages and directed them: (a) to scrape the earth and other filling materials dumped in the adjacent perimeter wall of the Sonkin Property and erect a retaining wall in accordance with the standards of the National Building Code; (b) to install and provide an adequate drainage system in accordance with the same Code; and (c) to jointly and severally pay Sps. Sonkin ₱300,000.00 as actual damages, ₱50,000.00 as moral damages, ₱50,000.00 as exemplary damages, ₱100,000.00 as

¹¹ The pertinent portion of Section 1202 of the National Building Code reads:

Section 1202. Excavation, Foundation and Retaining Walls.

x x x x

(c) *Footings, Foundations, and Retaining Walls*

x x x x

(2) Whenever or wherever there exists in the site of the construction an abrupt change in the ground levels or level of the foundation such that instability of the soil could result, retaining walls shall be provided and such shall be of adequate design and type of construction as prescribed by the Secretary.

¹² Entitled “ADOPTING A NATIONAL BUILDING CODE OF THE PHILIPPINES THEREBY REVISING REPUBLIC ACT NUMBERED SIXTY-FIVE HUNDRED FORTY-ONE” (February 19, 1977).

¹³ The original IRR have been revised in October 29, 2004.

¹⁴ Section 901 of the National Building Code provides:

Section 901. General.

Subject to the provisions of Book II of the Civil Code of the Philippines on Property, Ownership, and its Modification, all buildings hereafter erected, altered, remodeled, relocated or repaired for human habitation shall be provided with adequate and potable water supply, plumbing installation, and suitable wastewater treatment or disposal system, storm water drainage, pest and vermin control, noise abatement device, and such other measures required for the protection and promotion of health of persons occupying the premises and others living nearby.

¹⁵ See *rollo*, pp. 66-68.

¹⁶ See *id.* 63-64.

¹⁷ *Id.* at 60-72.

attorney's fees, and costs of suit. It dismissed all other claims of the Sps. Sonkin, as well as the counterclaims of Sps. Vergara, for lack of merit.¹⁸

The RTC found that the earth dumped on the Vergara Property pushed back the perimeter wall, causing cracks on Sps. Sonkin's bedroom wall and water to seep through the floor of the house. Moreover, the water seepage could only have come from the Vergara Property which was higher in elevation, as Sps. Vergara have failed to provide any drainage to divert the flow of water. Given the foregoing, the RTC concluded that Sps. Vergara's act of dumping earth, soil, and other materials in their property directly caused the damage to the house of Sps. Sonkin and, thus, they should be held liable for damages in favor of the latter. Needless to state, Sps. Vergara's co-defendants were exculpated from liability since they were not shown to have participated in the former's act.¹⁹

Aggrieved, Sps. Vergara appealed²⁰ the entire RTC Decision to the CA. They reiterated that they were merely exercising their proprietary rights over their property, *i.e.*, the Vergara Property, when they filled the area with soil and gravel, and that it was Sps. Sonkin who transgressed the National Building Code when they failed to leave a setback of two (2) meters between their house and the property line.²¹

On the other hand, Sps. Sonkin filed only a partial appeal,²² assailing the amount of actual, moral, and exemplary damages.

The CA Ruling

In a Decision²³ dated February 24, 2010, the CA reversed and set aside the assailed RTC Decision and entered a new one: (a) ordering the Sps. Vergara to install and provide an adequate drainage system on their property to prevent the flow of water into the Sonkin Property, and to pay Sps. Sonkin the amounts of ₱50,000.00 as moral damages and ₱100,000.00 as attorney's fees; (b) setting aside the directive to Sps. Vergara to remove the landfill and build a retaining wall on their property; (c) deleting the award of actual damages, as well as exemplary damages; and (d) dismissing the separate appeal of the Sps. Sonkin for lack of merit.²⁴

While the CA concurred with the finding of the RTC that the cause of the water seepage into the Sonkin Property was the act of Sps. Vergara in

¹⁸ Id. at 71-72.

¹⁹ Id. at 68-71.

²⁰ See Notice of Appeal dated February 7, 2007; id. at 73-74.

²¹ See id. at 25.

²² See Notice of Partial Appeal dated February 15, 2007; id. at 75-76.

²³ Id. at 21-34.

²⁴ Id. at 32-33.

elevating their own property by filling it with gravel and soil, it ascribed error upon the RTC in not finding that Sps. Sonkin were likewise guilty of contributory negligence in building their house directly abutting the perimeter wall.²⁵ The CA explained that despite the fact that under Article 637 of the Civil Code, the Sonkin Property is legally obliged to receive any water from higher estates such as the Vergara Property, it being the lower estate, the Sps. Sonkin still built their house with parts thereof directly abutting the perimeter wall and, in the process, violated the two (2)-meter setback rule under Section 708²⁶ of the National Building Code.²⁷ Thus, the CA deduced that had Sps. Sonkin followed such rule, then their house would not have sustained any damage from water coming from the Vergara property.²⁸ Proceeding from such ratiocination, the CA deleted the award of actual damages in the absence of evidence, *i.e.*, actual receipts, showing the amount actually spent by Sps. Sonkin in the repairs or renovation of their property. Similarly, it deleted the award of exemplary damages, as Sps. Vergara was not proven to have acted with gross negligence in levelling their property with the landfill and in mitigation of their liability in light of Sps. Sonkin's contributory negligence. The award of moral damages and attorney's fees, however, were affirmed.²⁹

Finally, the CA found the order directing Sps. Vergara to remove the landfill on their property to be unreasonable and an interference on their proprietary rights. It considered the order to provide an adequate drainage system on their property to be sufficient under the circumstances. Neither did it find the need to build a retaining wall on the Vergara Property for the purpose of containing the landfill thereon, opining that if it was Sps. Vergara's obligation to prevent damage to Sps. Sonkin's house by erecting a retaining wall, then it was the latter's concomitant obligation to detach their house from the perimeter wall in order to prevent any future damage or injury.³⁰

Only Sps. Vergara sought reconsideration³¹ from the CA Decision, which was denied in a Resolution³² dated September 2, 2010. Hence, this petition impleading only respondent Erlinda Torrecampo Sonkin (Erlinda), essentially arguing that Sps. Sonkin: (a) are not entitled to damages; and (b)

²⁵ Id. at 26-27.

²⁶ Section 708 (a) of the National Building Code provides:

Section 708. Minimum Requirements for Group A Dwellings.

(a) *Dwelling Location and Lot Occupancy.*

The dwelling shall occupy not more than ninety percent of a corner lot and eighty percent of an inside lot, and subject to the provisions on Easement on Light and View of the Civil Code of the Philippines, shall be at least 2 meters from the property line.

x x x x

²⁷ See id. at 27-28.

²⁸ Id. at 27.

²⁹ See id. at 30-33.

³⁰ Id. at 31-32.

³¹ See motion for reconsideration dated March 18, 2010; id. at 110-114.

³² Id. at 117-118.

should be ordered to demolish the parts of their house directly abutting the perimeter wall in compliance with Section 708 (a) of the National Building Code.³³ Records are bereft of showing that Sps. Sonkin made a further appeal to the Court.

The Issue Before the Court

The issues for the Court's resolution are (a) whether or not the CA erred in upholding the award of moral damages and attorney's fees; and (b) whether or not it should have ordered the demolition of the portion of the Sps. Sonkin's house that adjoins the partition wall.

The Court's Ruling

The petition is meritorious.

Article 2179 of the Civil Code reads:

Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

Verily, contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.³⁴

In the case at bar, it is undisputed that the Sonkin property is lower in elevation than the Vergara property, and thus, it is legally obliged to receive the waters that flow from the latter, pursuant to Article 637 of the Civil Code. This provision refers to the legal easement pertaining to the natural drainage of lands, which obliges lower estates to receive from the higher estates water which naturally and without the intervention of man descends from the latter, *i.e.*, not those collected artificially in reservoirs, etc., and the stones and earth carried by the waters,³⁵ *viz.*:

³³ See *id.* at 15-17. See also amended petition dated December 6, 2011; *id.* at 166-168.

³⁴ *Allied Banking Corporation v. Bank of the Philippine Islands*, G.R. No. 188363, February 27, 2013, 692 SCRA 186, 201, citing *Philippine National Bank v. Cheah Chee Chong*, G.R. Nos. 170865 & 170892, April 25, 2012, 671 SCRA 49, 64.

³⁵ See Paras, Edgardo L., *CIVIL CODE OF THE PHILIPPINES ANNOTATED*, Vol. II, Sixteenth Edition (2008), pp. 686-687.

Art. 637. **Lower estates are obliged to receive the waters which naturally and without the intervention of man descend from the higher estates, as well as the stones or earth which they carry with them.**

The owner of the lower estate cannot construct works which will impede this easement; neither can the owner of the higher estate make works which will increase the burden.³⁶ (Emphasis and underscoring supplied)

In this light, Sps. Sonkin should have been aware of such circumstance and, accordingly, made the necessary adjustments to their property so as to minimize the burden created by such legal easement. Instead of doing so, they disregarded the easement and constructed their house directly against the perimeter wall which adjoins the Vergara property, thereby violating the National Building Code in the process, specifically Section 708 (a) thereof which reads:

Section 708. Minimum Requirements for Group A Dwellings.

(a) *Dwelling Location and Lot Occupancy.*

The dwelling shall occupy not more than ninety percent of a corner lot and eighty percent of an inside lot, and subject to the provisions on Easement on Light and View of the Civil Code of the Philippines, shall be **at least 2 meters from the property line.**

x x x x (Emphasis and underscoring supplied)

Hence, the CA correctly held that while the proximate cause of the damage sustained by the house of Sps. Sonkin was the act of Sps. Vergara in dumping gravel and soil onto their property, thus, pushing the perimeter wall back and causing cracks thereon, as well as water seepage, the former is nevertheless guilty of contributory negligence for not only failing to observe the two (2)-meter setback rule under the National Building Code, but also for disregarding the legal easement constituted over their property. As such, Sps. Sonkin must necessarily and equally bear their own loss.

In view of Sps. Sonkin's contributory negligence, the Court deems it appropriate to delete the award of moral damages in their favor. While moral

³⁶ See also Article 50 of Presidential Decree No. 1067, entitled "A DECREE INSTITUTING A WATER CODE, THEREBY REVISING AND CONSOLIDATING THE LAWS GOVERNING THE OWNERSHIP, APPROPRIATION, UTILIZATION, EXPLOITATION, DEVELOPMENT, CONSERVATION AND PROTECTION OF WATER RESOURCES" (December 31, 1976), which provides:

Art. 50. Lower estates are obliged to receive the waters which naturally and without the intervention of man flow from the higher estates, as well as the stone or earth which they carry with them.

The owner of the lower estate can not construct works which will impede this natural flow, unless he provides an alternative method of drainage; neither can the owner of the higher estate make works which will increase this natural flow.

damages may be awarded whenever the defendant's wrongful act or omission is the *proximate cause* of the plaintiff's physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury in the cases specified or analogous to those provided in Article 2219³⁷ of the Civil Code,³⁸ they are only given to ease the defendant's grief and suffering and should, therefore, reasonably approximate the extent of hurt caused and the gravity of the wrong done.³⁹

Anent the issue on attorney's fees, the general rule is that the same cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208⁴⁰ of the Civil Code demands factual, legal, and equitable justification. Even when a claimant is compelled to

³⁷ Article 2219 of the Civil Code reads:

Art. 2219. Moral damages may be recovered in the following and analogous instances:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in article 309;
- (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

³⁸ *California Clothing, Inc. v. Quiñones*, G.R. No. 175822, October 23, 2013, 708 SCRA 420, 431, citing *Carpio v. Valmonte*, 481 Phil. 352, 364 (2004).

³⁹ *Id.*, citing *Villanueva v. Rosqueta*, 624 Phil. 330, 337 (2010).

⁴⁰ Article 2208 of the Civil Code reads:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.


In all cases, the attorney's fees and expenses of litigation must be reasonable.

litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.⁴¹ In this case, the Court observes that neither Sps. Sonkin nor Sps. Vergara (thru their compulsory counterclaim) were shown to have acted in bad faith in pursuing their respective claims against each other. The existence of bad faith is negated by the fact that both parties have valid contentions against each other. Thus, absent cogent reason to hold otherwise, the Court deems it inappropriate to award attorney's fees in favor of either party.⁴²

Finally, in view of Sps. Sonkin's undisputed failure to observe the two (2)-meter setback rule under the National Building Code, and in light of the order of the courts *a quo* directing Sps. Vergara to provide an adequate drainage system within their property, the Court likewise deems it proper, equitable, and necessary to order Erlinda, who is solely impleaded as respondent before the Court, to comply with the aforesaid rule by the removal of the portion of her house directly abutting the partition wall. The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. The defendant must therefore be held liable only for the damages actually caused by his negligence.⁴³

WHEREFORE, the petition is **GRANTED**. The Decision dated February 24, 2010 and the Resolution dated September 2, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 89357 are hereby **AFFIRMED** with **MODIFICATIONS**. The awards of moral damages and attorney's fees are **DELETED** and respondent Erlinda Torrecampo Sonkin is **DIRECTED** to strictly comply with Section 708 (a) of the National Building Code by removing or demolishing the portion of her house that occupies the two-meter easement from the property line. The rest of the CA Decision stands.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

⁴¹ See *The President of the Church of Jesus Christ of Latter Day Saints v. BTL Construction Corporation*, G.R. No. 176439, January 15, 2014, citing *Development Bank of the Philippines v. Traverse Development Corporation*, 674 Phil. 405, 415 (2011).

⁴² See *id.*

⁴³ *Bank of America NT & SA v. Philippine Racing Club*, 611 Phil. 687, 702 (2009), citing *Lambert v. Heirs of Ray Castillon*, 492 Phil. 384, 391-392 (2005).

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

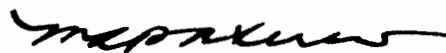
Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Jose Portugal Perez
JOSE PORTUGAL PEREZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice