

THIRD DIVISION

[G.R. No. 134692, August 01, 2000]

**ELISEO FAJARDO, JR., AND MARISSA FAJARDO, PETITIONERS,
VS. FREEDOM TO BUILD, INC., RESPONDENT.**

D E C I S I O N

VITUG, J.:

Freedom To Build, Incorporated, an owner-developer and seller of low-cost housing, sold to petitioner-spouses, a house and lot designated Lot No. 33, Block 14, of the De la Costa Homes in Barangka, Marikina, Metro Manila. The Contract to Sell executed between the parties, contained a Restrictive Covenant providing certain prohibitions, to wit:^[1]

"Easements. For the good of the entire community, the homeowner must observe a two-meter easement in front. No structure of any kind (store, garage, bodega, etc.) may be built on the front easement.

"x x x x x x x x

"Upward expansion. A second storey is not prohibited. But the second storey expansion must be placed above the back portion of the house and should not extend forward beyond the apex of the original building.

"x x x x x x x x

"Front expansion: 2nd Storey: No unit may be extended in the front beyond the line as designed and implemented by the developer in the 60 sq. m. unit. In other words, the 2nd floor expansion, in front, is 6 meters back from the front property line and 4 meters back from the front wall of the house, just as provided in the 60 sq. m. units."^[2]

The above restrictions were also contained in Transfer Certificate of Title No. N-115384 covering the lot issued in the name of petitioner-spouses.

The controversy arose when petitioners, despite repeated warnings from respondent, extended the roof of their house to the property line and expanded the second floor of their house to a point directly above the original front wall.^[3] Respondent filed before the Regional Trial Court, National Capital Judicial Region, Branch 261, Pasig City, an action to demolish the unauthorized structures.

After trial, judgment was rendered against petitioners; thus:

"WHEREFORE, premises considered, defendant spouses Eliseo B. Fajardo, Jr., and Marissa F. Fajardo are hereby directed to immediately demolish and remove the extension of their expanded housing unit that exceeds the limitations imposed by the Restrictive Covenant, otherwise the

Branch Sheriff of this Court shall execute this decision at the expense of the defendants.

"As to damages and attorney's fees, it appearing from the records of this case that no evidence to sustain the same was adduced by either of the parties, the Court deems it proper not to award any.

"SO ORDERED."^[4]

On appeal to it, the Court of Appeals affirmed the decision of the trial court.

In their petition for review to this Court, the spouses contest the judgment of the courts below. Adjacent owners reportedly have no objection to the construction, and have even expressed interest in undertaking a similar expansion in their respective residences. Moreover, the couple's two children, a son and a daughter, might soon get married and then share, with their families, living quarters with petitioners. The latter also assail the personality of private respondent to question the construction which have effectively relinquished its ownership, right or interest over the subdivision upon the execution of the Deed of Absolute Sale in favor of the individual homeowners. Per the contract between Freedom to Build Incorporated and the De la Costa Low Income Project Homeowners' Association (hereinafter homeowners' association), petitioners aver, the enforcement of the prohibitions contained in the "Restrictive Covenant" originally residing on respondent is now lodged in the homeowners' association. Petitioners maintain that it is incumbent upon the homeowners' association, not on respondent, to enforce compliance with the provisions of the covenant.

A perusal of the provisions of the covenant would show that the restrictions therein imposed were intended -

"For the protection and benefit of the De La Costa Low Income Housing Project, and of all the persons who may now, or hereafter become owners of any part of the project, and as part of the consideration for the conveyance of the housing unit, these restrictions are promulgated in order that; the intents and purposes for which the project was designed shall be upheld; to wit: subsequent duly approved sale and assignments of housing units shall be made only to low income families; a certain level of privacy shall be observed; a community spirit shall be fostered; and an undisturbed possession and occupancy at the homeowners shall be maintained."^[5]

Restrictive covenants are not, strictly speaking, synonymous with easements. While it may be correct to state that restrictive covenants on the use of land or the location or character of buildings or other structures thereon may broadly be said to create easements or rights, it can also be contended that such covenants, being limitations on the manner in which one may use his own property,^[6] do not result in true easements,^[7] but a case of servitudes (burden), sometimes characterized to be negative easements or reciprocal negative easements. Negative easement is the most common easement created by covenant or agreement whose effect is to preclude the owner of the land from doing an act, which, if no easement existed, he would be entitled to do.^[8]