

FIRST DIVISION

[G.R. NO. 164601, September 27, 2006]

**SPOUSES ERLINDA BATAL AND FRANK BATAL, PETITIONERS, VS.
SPOUSES LUZ SAN PEDRO AND KENICHIRO TOMINAGA,
RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court questioning the Decision^[1] dated September 29, 2003 promulgated by the Court of Appeals (CA) in CA-G.R. CV No. 71758, which affirmed the Decision dated May 31, 2004 of the Regional Trial Court, Branch 7, Malolos, Bulacan (RTC); and the CA Resolution^[2] dated July 19, 2004.

This case originated from an action for damages filed with the RTC by Spouses Luz San Pedro and Kenichiro Tominaga (respondents) against Spouses Erlinda Batal and Frank Batal (petitioners) for failure to exercise due care and diligence by the latter in the preparation of a survey which formed the basis for the construction of a perimeter fence that was later discovered to have encroached on a right of way.

The facts of the case, as found by the RTC and summarized by the CA, are as follows:

The spouses Luz San Pedro (Luz) and Kenichiro Tominaga (Kenichiro) are the owners of a parcel of land, on which their house was erected, described as Lot 1509-C-3 with an area of 700 square meters situated in Barangay Malis, Guiguinto, Bulacan. Said property was acquired by them from one Guillermo Narciso as evidenced by a "*Bilihan ng Bahagi ng Lupa*" dated March 18, 1992.

The spouses Luz and Kenichiro then contracted the services of Frank Batal (Frank) who represented himself as a surveyor to conduct a survey of their lot for the sum of P6,500.00. As Luz and Kenichiro wanted to enclose their property, they again procured the services of Frank for an additional fee of P1,500.00 in order to determine the exact boundaries of the same by which they will base the construction of their perimeter fence.

Consequently, Frank placed concrete monuments marked P.S. on all corners of the lot which were used as guides by Luz and Kenichiro in erecting a concrete fence measuring about eight (8) feet in height and cost them P250,000.00 to build.

Sometime in 1996, a complaint was lodged against Luz and Kenichiro

before the barangay on the ground that the northern portion of their fence allegedly encroached upon a designated right-of-way known as Lot 1509-D. Upon verification with another surveyor, Luz and Kenichiro found that their wall indeed overlapped the adjoining lot. They also discovered that it was not Frank but his wife Erlinda Batal (Erlinda), who is a licensed geodetic engineer.

During their confrontations before the barangay, Frank admitted that he made a mistake and offered to share in the expenses for the demolition and reconstruction of the questioned portion of Luz and Kenichiro's fence. He however failed to deliver on his word, thus the filing of the instant suit.

In their defense, the defendants-spouses Frank and Erlinda Batal submitted that Frank never represented himself to be a licensed geodetic engineer. It was Erlinda who supervised her husband's work [and t]hat the house and lot of plaintiffs, Luz and Kenichiro, were already fenced even before they were contracted to do a resurvey of the same and the laying out of the concrete monuments. The spouses Frank and Erlinda also refuted the spouses Luz's and Kenichiro's allegation of negligence and averred that the subject complaint was instituted to harass them.^[3]

On May 31, 2001, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against defendants, as follows:

1. Ordering the defendants [petitioners] to pay to plaintiffs [respondents] the sum of P6,500.00 as refund for their professional fees by reason of the erroneous relocation survey of the property in question;
2. Ordering the defendants to pay to plaintiffs the sum of Three Hundred Thousand Pesos (P300,000.00) as actual damages;
3. Ordering the defendants to pay to plaintiffs the sum of P50,000.00 as attorney's fees; and
4. Ordering the defendants to pay to plaintiffs the costs of this suit.

SO ORDERED.^[4]

Regarding the issue whether the petitioners failed to exercise due care and diligence in the conduct of the resurvey which eventually caused damage to the respondents, the RTC held:

As against the bare and self-serving denials of the [petitioners], the testimony of [respondent] Luz San Pedro that she constructed the encroaching perimeter fence in question using as guide the cyclone concrete monuments marked P.S. that were installed by [petitioner] Frank Batal and his survey team, is more credible. As testified to by [respondent] Luz San Pedro, she proceeded with the construction of the perimeter fence in question upon assurance given by [petitioner] Frank Batal that she could already do so as there were already concrete monuments placed on the boundaries of her property x x x.

x x x x

It does not matter that the location plan dated May 3, 1992 (Exhibit "B") was later approved by the DENR, as it is quite apparent that the mistake committed by [petitioner] Frank Batal pertains to the wrong locations of the concrete monuments that he placed on the subject property and which were used or relied upon by the [respondents] in putting up the fence in question. Such mistake or negligence happened because quite obviously the installation of said concrete monuments was without the needed supervision of [respondent] Erlinda Batal, the one truly qualified to supervise the same. x x x x

x x x x^[5]

The RTC found that indeed the perimeter fence constructed by the respondents encroached on the right-of-way in question; that the preponderance of evidence supports the finding that the encroachment was caused by the negligence of the petitioners; that, in particular, respondents constructed the fence based on the concrete cyclone monuments that were installed by petitioner Frank Batal and after he gave his assurance that they can proceed accordingly; that the negligence in the installation of the monuments was due to the fact that petitioner Erlinda Batal, the one truly qualified, did not provide the needed supervision over the work; and, lastly, that the testimonies of the petitioners on the whole were not credible.

The petitioners appealed to the CA. On September 29, 2003, the CA rendered its Decision affirming the RTC decision in its entirety.^[6]

In concurring with the findings of the RTC, the CA in addition held that the petitioners cannot claim that the error of the construction of the fence was due to the unilateral act of respondents in building the same without their consent, since the former gave their word that the arrangement of the monuments of title accurately reflected the boundaries of the lot; and that, as a result, the northern portion of the fence had to be demolished and rebuilt in order to correct the error.

Hence, the instant Petition assigning the following errors:

I.

The Court of Appeals erred in ruling for the Respondents and basing its decision [o]n the following jurisprudence:

- (a) "[A] party, having performed affirmative acts upon which another person based his subsequent actions, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter. (Pureza vs. Court of Appeals, 290 SCRA 110)"; and
- (b) "Findings of fact made by the trial court [are] entitled to great weight and respect. (Lopez vs. Court of Appeals, 322 SCRA 686).

II.

The Court of Appeals erred in ruling in favor of Respondents by premising its Decision on [a] misapprehension of facts amounting to grave abuse of discretion . . . which is also a ground for a Petition for Review.^[7]

The petition must fail.

The petitioners insist that there had been no error in their resurvey, but rather, the error occurred in respondents' fencing; that the proximate cause of the damage had been respondents' own negligence such that the fencing was done unilaterally and solely by them without the prior approval and supervision of the petitioners. And to justify their case, the petitioners argue that the courts *a quo* misapprehended the facts. Accordingly, they ask this Court to review findings of fact.

A review of the factual findings of the CA and the RTC are matters not ordinarily reviewable in a petition for review on *certiorari*.^[8] Well-established is the rule that factual findings of the trial court and the CA are entitled to great weight and respect^[9] and will not be disturbed on appeal save in exceptional circumstances,^[10] none of which obtains in the present case. This Court must stress that the findings of fact of the CA are conclusive on the parties and carry even more weight when these coincide with the factual findings of the trial court,^[11] as in this case.

The Court will not weigh the evidence all over again unless there is a showing that the findings of the lower court are totally devoid of support or are clearly erroneous so as to constitute serious abuse of discretion.^[12] The petitioners failed to demonstrate this point. On the contrary, the finding of the courts *a quo* that the damage caused to the respondents was due to petitioners' negligence is sufficiently supported by the evidence on record. For these reasons, the petitioner's contentions bear no import.

Culpa, or negligence, may be understood in two different senses: either as *culpa aquiliana*, which is the wrongful or negligent act or omission which creates a *vinculum juris* and gives rise to an obligation between two persons not formally bound by any other obligation, or as *culpa contractual*, which is the fault or negligence incident in the performance of an obligation which already existed, and which increases the liability from such already existing obligation.^[13] *Culpa aquiliana* is governed by Article 2176 of the Civil Code and the immediately following Articles; while *culpa contractual* is governed by Articles 1170 to 1174 of the same Code.^[14]

Articles 1170 and 1173 provide:

ART. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

ART. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of