

EIGHTH DIVISION

[CA-G.R. SP No. 131707, March 13, 2015]

**NORTH GREENHILLS ASSOCIATION, INC., PETITIONER, VS.
ATTY. NARCISO MORALES, RESPONDENT.**

D E C I S I O N

LANTION, J.A.C., J.:

Before this Court is a Petition for Review^[1] under Rule 43 of the Rules of Court assailing the Decision^[2] dated 17 February 2010 and Resolution^[3] dated 08 August 2013 both issued by the Office of the President in O.P. Case No. 08-I-004, the respective *fallo* of which read:

17 February 2010 Decision:

“IN VIEW OF THE FOREGOING, the appeal is hereby DISMISSED for lack of merit and the decision appealed from (is) AFFIRMED in toto.

SO ORDERED.”

08 August 2013 Resolution

“WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED.

SO ORDERED.”

THE FACTS

Respondent Atty. Narciso Morales is a resident of North Greenhills, a residential village in San Juan City. His house is located alongside Club Filipino Avenue, the principal road outside the village, and McKinley Park, the open space/playground area of the aforesaid subdivision.

In June 2003, Petitioner North Greenhills Association, Inc. (NGA) constructed a common toilet in McKinley Park adjacent to Respondent's wall and side door, effectively blocking the latter. NGA claims that a pavillion/multi-purpose hall would be constructed next to the restroom.

Consequently, Respondent filed a Complaint on 23 July 2003 before the Housing and Land Use Regulatory Board (HLURB) Arbiter and prayed for the demolition of the aforesaid toilet. On 13 August 2003, Respondent amended his Complaint and additionally sought for the demolition of a pavilion or kiosk which was also then being built at McKinley Park. Pertinent portions of Amended Complaint^[4] read:

"3. Plaintiff has been a resident of North Greenhills since 1970 and the primary consideration for his purchase of the lot on which his residence now stands is the immediate access of the property to both the principal road outside the subdivision and the park within the village.

4. Precisely because of the unique location of the lot, plaintiff had his house built thereon making sure that the dual access was maintained. The frontage was along the main public road, Club Filipino Ave. (formerly McKinley Street), while the right side of the residence was made to face and abut the open area of the subdivision park. Although this side of the residence is secured by plaintiff's perimeter wall, his access to the park was through a side or exit door;

5. Since the time plaintiff set foot on his property and up to the time defendants committed the acts complained of herein, or for a period spanning thirty-three (33) years, plaintiff had an open, continuous, immediate, and unhampered access to the subdivision park through his side door, which also served as exit door in case of any eventuality;

6. Sometime the last week of June 2003, defendants, more particularly defendant Alviar, being head of the NGA, without prior notice to the plaintiff, blocked plaintiff's side door by constructing, or ordering construction of the park's common toilet or restroom, on the open area adjacent to plaintiff's wall and side door. The toilet used to be located, for a number of years, several meters away from plaintiff's residence;

7. Plaintiff immediately objected to defendant's action and sent a written protest dated June 30, 2003 addressed to defendant Alviar, furnishing copies thereof to all the directors of defendant NGA Board, but defendants completely ignored plaintiff's protestations xxx;

7.1. Not long thereafter, plaintiff likewise learned that a pavillion was also being constructed beside the toilet xxx."

Respondent Atty. Morales claimed that the construction of the aforesaid toilet in the park adjacent to his residence which blocked the side door of his house is illegal as he was purportedly deprived of his right as a resident to have access to the park. Respondent further argued that the construction of a common or public toilet right beside the wall of his house, not far from his dining area, is a nuisance *per se*. The acts of NGA is also allegedly a violation of the provisions of Sec. 22 of PD 957 and the Deed of Donation dated 31 August 1976 between Petitioner NGA and the subdivision's original owner and developer, Ortigas & Co., Ltd.

Petitioner NGA, in its Answer with Compulsory Counterclaim,^[5] countered that it is the absolute owner of McKinley Park located in Club Filipino Avenue, North Greenhills Subdivision, San Juan City and has absolute right to fence the said property and impose reasonable conditions for the use thereof by both its members and "third parties." The construction of the public toilet is for the use and benefit of all NGA members, including the Petitioner. NGA added that Petitioner's use of a side entrance to the park for 33 years could not ripen into any right because easement of right of way could not be acquired by prescription. Finally, in its Compulsory Counterclaim, Petitioner prayed, among others, for an award of P878,778.40,

corresponding to the total amount of Respondent's homeowners association annual membership dues which Respondent allegedly failed to pay since 1980.

On 13 August 2003, the HLURB Arbiter conducted an ocular inspection of the disputed premises and noted the following:

"1. The complainant's property is along Club Filipino Ave. (formerly McKinley Street) identified as Lot 5 Block 1 of the above-mentioned subdivision. It is adjacent to the open space identified as Lot 4 Block 1.

2. Investigation shows that within the said open space, there is an on-going construction of permanent structures, a multi-purpose hall, right beside the complainant's property. With the said construction, it permanently blocked the gate provided by the complainant to gain access at the open space. However, the gate at the property at Lot 3 Block 1 (allegedly owned by Atty. Paulino Ejercito) remains to be open for the open space;

3. It was verified that a common toilet for the multi-purpose hall is being constructed adjacent to the perimeter wall of the complainant;

4. At the time of the inspection, the undersigned noted that there was no billboard posted indicating the building permit issued by the Building Officials of the Municipality of San Juan for the on-going construction of multi-purpose hall."^[6]

On 16 February 2005, the HLURB Arbiter rendered a Decision,^[7] the decretal portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered ordering xxx the removal of the pavilion and the relocation of the common toilet in a place where it will not be a nuisance to any resident. Respondents are further directed to remove the obstruction to the side door of complainant.

All other claims and counterclaims are hereby dismissed for lack of merit.

IT IS SO ORDERED."

NGA appealed to the HLURB Board of Commissioners. On 22 November 2007, the HLURB Board of Commissioners modified the assailed 16 February 2005 ruling of the HLURB Arbiter by dropping Atty. Alviar as a party to the case and upholding the right of NGA to make the necessary constructions in the park, viz:

"Further, the complaint against respondent Alviar should be dropped as no acts have been particularly attributed to him in his personal activity.

WHEREFORE, premises considered, the decision of the Regional Office is hereby MODIFIED. Accordingly, respondent NGA is ordered to relocate the restroom constructed or being constructed in the McKinley Park away from the wall of any resident and where it will not block complainant's side door access to the park.

SO ORDERED,"[8]

Petitioner NGA appealed the 22 November 2007 Decision of the HLURB Board of Commissioners to the Office of the President (OP).

On 17 February 2010, the OP rendered its herein assailed Decision which affirmed *in toto* the aforementioned 22 November 2007 ruling of the HLURB Board of Commissioners.

Petitioner NGA seasonably filed a Motion for Reconsideration but the same was denied by the OP in its assailed 08 August 2013 Resolution.

Hence, this Petition.

GROUND

Petitioner cites the following grounds for allowance of the instant Petition for Review:

"1. THE OFFICE OF THE PRESIDENT COMMITTED AN ERROR IN ITS FACTUAL FINDING THAT THE COMFORT ROOM BUILT BY NGA AT ITS (sic) MCKINLEY PARK IS A NUISANCE TO ATTY. MORALES. AS RULED BY THE SUPREME COURT, TOILETS ARE NOT NUISANCES *PER SE*. NEITHER HAS ATTY. MORALES PROVEN THAT HE EXPERIENCED PHYSICAL DISCOMFORT DUE TO THE EXISTENCE OF THE TOILET ON THE OTHER SIDE OF HIS WALL.

2. THE OFFICE OF THE PRESIDENT COMMITTED AN ERROR IN ITS FACTUAL FINDING THAT NGA HAS BEEN UNDULY SELECTIVE IN BLOCKING ATTY. MORALES' ACCESS DOOR TO THE PARK. THE OFFICE OF THE PRESIDENT FAILED TO CONSIDER THE SECURITY ISSUE POSED BY THE DUAL ACCESS OF ATTY. MORALES' HOUSE BOTH TO THE MAIN STREET OUTSIDE AND THE PARK INSIDE, THEREBY MAKING IT POSSIBLE FOR CRIMINAL ELEMENTS TO ENTER THE SUBDIVISION THROUGH ATTY. MORALES' ACCESS DOOR WITHOUT HAVING TO PASS THROUGH THE GUARDS OF NGA;

3. THE OFFICE OF THE PRESIDENT COMMITTED AN ERROR OF LAW FINDING THAT ITS ORDER FOR NGA RETURN (sic) ATTY. MORALES' PERSONAL ACCESS DOOR TO THE PARK DOES NOT CONSTITUTE AN EASEMENT OF RIGHT OF WAY ON THE LAND OF NGA;

4. THE OFFICE OF THE PRESIDENT COMMITTED AN ERROR OF LAW IN UPHOLDING HLURB'S FINDING THAT NGA'S CLAIM FOR UNPAID MEMBERSHIP DUES IS NOT A COMPULSORY COUNTERCLAIM BUT RATHER A PERMISSIVE COUNTERCLAIM WHICH REQUIRED THE PAYMENT OF DOCKET FEES;

5. THE OFFICE OF THE PRESIDENT COMMITTED AN ERROR OF LAW IN UPHOLDING HLURB'S FINDING THAT NGA'S CLAIM FOR UNPAID MEMBERSHIP DUES IS NOT YET RIPE FOR ADJUDICATION DUE TO LACK