

SECOND DIVISION

[CA-G.R. CV. No. 101419, November 21, 2014]

**RANILDO MANINGDING AND REGINA LUZ[*] MANINGDING,
PLAINTIFFS-APPELLANTS, VS. SUBIC WATER AND SEWERAGE
COMPANY, INC., EDNA G. CANLAS AND YOLANDA RIVA,
DEFENDANTS-APPELLEES.**

D E C I S I O N

SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision^[1] dated March 4, 2013 of the Regional Trial Court, Third Judicial Region, Branch 75, Olongapo City in Civil Case No. 119-0-10 for Damages with Prayer for the Issuance of Writ of Preliminary Mandatory Injunction entitled "Ranildo Maningding, joined by his wife Regina Luiz Maningding, *Plaintiffs*, vs. Subic Water and Sewerage Company, Inc., Edna G. Canlas and Yolanda Riva, *Defendants*.", the dispositive portion of which reads:

"WHEREFORE, judgment is rendered dismissing the complaint.

SO DECIDED."^[2]

The facts are:

A Complaint^[3] for Damages with Prayer for the Issuance of a Writ of Preliminary Mandatory Injunction was filed by plaintiffs-appellants, Ranildo G. Maningding (Ranildo for brevity) and Regina Luz Maningding (Regina, or collectively, Spouses Maningding for brevity) against defendants-appellees Subic Water & Sewerage Company, Inc. (SWSCI for brevity), Edna G. Canlas (Canlas for brevity) and Yolanda Riva (Riva, or collectively, defendants-appellees for brevity) averring that: plaintiffs-appellants Spouses Maningding are registered customers of defendant-appellee SWSCI with Account No. 133-12-566 for the supply of water through a ½-inch pipeline leading to a land used as a garage located at No. 9 Kentucky Lane, Upper Kalaklan, Olongapo City (subject property for brevity); sometime in July 2010, plaintiff-appellant Ranildo, at his own instance, requested defendant-appellee SWSCI to inspect the subject property for the purpose of putting in order the pipelines traversing it because the same had been causing problems in his construction works; in the course of the inspection by the personnel of defendant-appellee SWSCI conducted sometime on July 15, 2010, an alleged "bypass" was found even without actual excavation of the entire length of the pipeline after the main valve was closed and the pipe inside still discharged water; there is no evidence of the alleged "bypass" unless actual digging of the pipeline is made to confirm its existence; hence, the finding of a "bypass" is inconclusive; they were very much willing to cooperate with defendant-appellee SWSCI by allowing the latter to

excavate; even if there is a "bypass", they have no knowledge of it because when the subject property was purchased from the previous owner, the pipelines were already existing and imbedded underground; on July 20, 2010, defendant-appellee SWSCI illegally disconnected its water service, cutting off the water supply to the subject property; and, subsequently, defendant-appellee Riva, acting as IRDD Supervisor/Associate of defendant-appellee SWSCI, prepared and approved a Billing Statement dated July 23, 2010 requiring plaintiffs-appellants Spouses Maningding to pay the total amount of P213, 942.52 inclusive of the amount billed for 2,153 cubic meters of water from November 2009 to July 23, 2010, violation fee, arrears, and inspection fee.

Plaintiffs-appellants Spouses Maningding further alleged^[4] that: defendants-appellees Canlas and Riva refused to reconnect their water service even if they are not responsible for the alleged "bypass"; the Billing Statement sent to them by defendant-appellee SWSCI has no factual and legal basis because P211,288.35 is based on 2,153 cubic meters of water for the stated period, which is equivalent to 39.87 drums per day of water discharge or one drum equivalent to 200 liters, or 5.5375 liters per minute; the standard engineering data for the flow of water discharge of a one-half inch pipe is only 3.785 liters per minute; it is therefore impossible to obtain from a half-inch pipe 2,153 cubic meters of water for the period stated; hence, the additional billing of P211,288.53 is arbitrary, capricious, and whimsical and was intentionally bloated to cause injustice, harassment and hardship to them; they were forced to source water from outside causing additional expenses and disruption of business activities for which they suffered and continue to suffer P500.00 per day in damages; and, defendants-appellees violated Articles 19, 20, and 21 of the Civil Code.

On August 16, 2010, summons^[5] was served upon defendants-appellees.

On November 19, 2010, defendants-appellees filed their Answer^[6] denying the material allegations of the complaint, and by way of special and affirmative defenses, alleged that: the controversy started when defendant-appellee SWSCI's inspection team visited the subject property on July 15, 2010; the inspection was led by a certain Ms. Maria Teresa S. Maranon (Maranon for brevity), the Water Distribution Manager of defendant-appellee SWSCI, responsible for the operations and maintenance of the entire distribution system of the company and overseeing the Technical Services Division and Meter and Service Line Management Division; her duty is to reduce the non-revenue water by identifying losses caused by theft of water; the inspection was made in response to the verbal request of plaintiff-appellant Ranildo's foreman, Mr. Glenn Berdom (Mr. Berdom for brevity); Mr. Berdom requested for the relocation of service lines that were supplying water to a group of residents located at the back of the subject property; plaintiff-appellant Ranildo acquired the subject property from a certain Jesy Rose Viacrusis; at the time plaintiff-appellant Ranildo acquired the subject property, it was an empty lot with no improvements and with only the two (2)-inch distribution line traversing the left side thereof and servicing the residents at the back portion; the request of Mr. Berdom was not for the purpose of uncovering any alleged bypass connection but to determine how these service lines were tapped and how they could be relocated; this goal proved to be difficult because the two- inch distribution line to which the service lines were tapped had already been covered by new residential structures; Ms. Maranon and the inspection team couldn't help but wonder that if the true intent

of plaintiff-appellant Ranildo was to put in order the pipelines traversing his lot which are not buried underground, he should have done so when he purchased the subject property and before concrete structures had already been completed at which point the 2-inch distribution line was already completely covered, leaving only the service lines visible; this made it impossible for defendants-appellees to check for any interconnection between a service line and the distribution line to which they were probably tapped; the inspection team nevertheless proceeded with the inspection by asking Mr. Berdom to identify the meter with serial number 9611812 registered and pertaining to the service connection of plaintiff-appellant Ranildo; to test the sufficiency of the water supply, all three (3) outlets/faucets were turned on and sufficient water flowed therefrom; Ms. Maranon then directed one of her men to disconnect the registered service connection identified by Mr. Berdom as running through the meter with serial number 9611812; to her surprise, the water pressure coming from the three (3) outlets remained the same; it is logically impossible to have flowing water supply even when the service line that supplies it is already disconnected from the main line and even after the cock valve was already turned off as verified by the fact that the meter did not register any flowing water anymore; since the water kept on flowing at the same velocity as before disconnection, this is a prima facie evidence of the presence of an illegal connection or bypass; Ms. Maranon studied the history of the account and found that the subject property was previously involved in a direct tapping case and plaintiff-appellant Ranildo himself settled the case by paying all the violation charges on October 6, 2009; she also discovered that although classified as a residential consumer, plaintiff-appellant Ranildo caused the construction of structures clearly intended for commercial use for a logistics business such as a garage for several delivery trucks; despite the on-going construction of the commercial area as well as at least two (2) residential structures already occupied by two (2) families, and the presence of several construction workers, since the construction started as early as November 2009, the registered consumption varied from a low of 7 cubic meters in December 2009 to a high of just 23 cubic meters in June 2010; this is even less than the average consumption level of a family of five (5) members at 300 cubic meters per month; she estimated the volume of water consumption based on the data provided by Mr. Berdom indicating the probable level of consumption due to the construction activity, number of construction workers, and usage of two (2) families staying on the subject property; the billing thus includes the undercollection of water, penalty not exceeding double the value of the water stolen, violation fee, inspection fee, and unpaid water bill; she prepared a Violation Report dated July 15, 2010 as well as Notice of Violation on even date, duly received by plaintiff-appellant Ranildo, and advised him to report to defendant-appellee Riva within five (5) days at her office; on July 20, 2010, the service connection of plaintiffs-appellants Spouses Maningding was disconnected as authorized by paragraph 2, Section 2, Rule III of the Water Utility Rules & Regulations, an integral part of the Service Application Agreement signed by plaintiff-appellant Ranildo; and, the said portion of the rules states that defendant-appellee SWSCI has the right to disconnect any service connection "after serving notice to a customer who had committed infraction of these utility rules".

Defendants-appellees further alleged^[7] that: surveillance was conducted on September 5 and 6, 2010 from 8 o'clock in the morning to 5 o'clock in the afternoon to assess the present level of water consumption; during the surveillance, no outside supplier of water was seen making any delivery to the subject property and it was observed that there was heavy and indiscriminate use of water which is

unexpected because the registered service connection had been cut-off and the second bypass had already been tapped-off; it was therefore suspected that plaintiff-appellant Ranildo managed to source water illegally from the first bypass connection until the present as it had not yet been tapped off; there was also a woman seen filling a blue plastic drum with water which the woman used for cleaning; in fact, in a short period of time, the drum was filled up and more drums were lined up in the same area and were likewise filled with water using a hose connected to the illegal connection that was removed after use to prevent detection; the area where the illegal connection is located is always covered by a parked vehicle to obstruct the view of any person conducting a surveillance on the subject property; and, when a meeting was held between defendant-appellee Riva and plaintiff-appellant Ranildo at the former's office, the latter did not contest the finding of illegal connection but merely asked for a discount regarding the penalties.

The parties thereafter filed their respective Pre-Trial Briefs.^[8]

On June 3, 2011, a Pre-Trial Conference was held but defendants-appellees failed to attend the same, prompting the lower court to issue an Order of Default against them. Defendants- appellees then filed a Motion to Lift Order of Default^[9] to which plaintiffs-appellants Spouses Maningding filed their Opposition.^[10] In an Order dated July 12, 2011,^[11] the lower court resolved to grant defendants-appellees' Motion to Lift Order of Default in the interest of substantial justice.

After a summary hearing, the lower court in an Order dated June 8, 2011,^[12] denied plaintiffs-appellants Spouses Maningding's Motion for Issuance of a Preliminary Mandatory Injunction.

When defendants-appellees again failed to attend the Pre-Trial Conference, they were declared in default for the second time. Defendants-appellees then filed another Motion to Lift Order of Default^[13] but the same was denied.^[14] Thus, the lower court granted leave to plaintiffs-appellants Spouses Maningding to present evidence ex-parte.^[15]

During the ex-parte presentation of evidence, plaintiffs-appellants Spouses Maningding presented plaintiff-appellant Ranildo himself as their lone witness. Plaintiff-appellant Ranildo adopted his previously executed judicial affidavit^[16] and submitted a supplemental judicial affidavit, both containing substantially the same allegations as stated in the Complaint, which were earlier discussed.^[17]

On January 21, 2013,^[18] plaintiffs-appellants Spouses Maningding filed their Formal Offer of Exhibits. In an Order dated March 1, 2013,^[19] the lower court admitted the exhibits offered in evidence.

On March 4, 2013, the lower court rendered the assailed Decision^[20] dismissing the complaint. The lower court found that while the acts complained of may have caused injury to the plaintiffs-appellants Spouses Maningding, such injury alone is not sufficient to warrant damages especially since there is no proof that the acts were performed for the sole purpose of injuring them. Actual damages were also denied for failure to substantiate the same.

Undaunted, plaintiffs-appellants Spouses Maningding filed the present appeal^[21] raising the following errors:^[22]

I.

THE LOWER COURT ERRED IN CONCLUDING THAT THERE IS NO EVIDENCE OF MALICE OR BAD FAITH THAT WOULD JUSTIFY THE AWARD OF DAMAGES UNDER ART. 19 AND ART. 21 OF THE CIVIL CODE.

II.

THE LOWER COURT ERRED IN DENYING APPELLANTS CLAIMS FOR ACTUAL DAMAGES, MORAL DAMAGES, EXEMPLARY DAMAGES, ATTORNEY'S FEES AND COSTS OF SUIT.

The appeal lacks merit.

Essentially, plaintiffs-appellants Spouses Maningding contend^[23] that: the Billing Statement is whimsical and capricious as the amount billed is based on a water discharge far greater than the maximum flow from a half-inch pipe; the disconnection of their water service connection was not based on physical evidence but rather, on pure speculation and conjecture that there exists a bypass in the subject property thereby depriving them of due process; no police officer, barangay representative or impartial witness was present at the time the bypass was discovered; and, no direct evidence could hold them liable for the alleged bypass.

After a careful examination of the records of the case, as well as the law and jurisprudence pertinent thereto, this Court finds that the lower court correctly dismissed the complaint of plaintiffs-appellants Spouses Maningding.

The principle of abuse of rights is provided for in the Civil Code on the chapter of human relations. The elements of an abuse of rights under Article 19 of the Civil Code are the following: (1) There is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.^[24] On the other hand, Article 21 of the same code deals with acts *contra bonus mores*, and has the following elements: 1) There is an act which is legal; 2) but which is contrary to morals, good custom, public order, or public policy; 3) and it is done with intent to injure.^[25] A common element therefore under Articles 19 and 21 is that the act must be intentional for the resulting injury to warrant an award of damages.^[26]

In determining whether or not the principle of abuse of rights may be invoked, there is no rigid test which can be applied.^[27] While the Court has not hesitated to apply Article 19 whenever the legal and factual circumstances called for its application,^[28] the question of whether or not the principle of abuse of rights has been violated resulting in damages under Article 20 or Article 21 or other applicable provision of law, depends on the circumstances of each case.^[29]

In this case, it is undeniable that defendant-appellee SWSCI had a legal right to