



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames

*Please take notice that the Court, Third Division, issued a Resolution dated **March 6, 2023**, which reads as follows:*

“**G.R. No. 254855** (*Gilbert Y. Go and Annabelle G. Ong, Petitioners, vs. Rosita Arcenas, Respondent*). – Before the Court is a Petition¹ for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to partially reverse the Decision² dated June 27, 2019, and the Resolution³ dated October 22, 2020 of the Court of Appeals (CA) in CA-G.R. CV No. 06479. The CA affirmed the Decision⁴ dated November 10, 2014 of Branch 21, Regional Trial Court (RTC), Cebu City in a complaint for damages docketed as Civil Case No. CEB-30882.

The Antecedents

Spouses Gilbert Go (Gilbert) and Maria Teresa Go⁵ (collectively, Spouses Go) and spouses Raymund Ong and Annabelle G. Ong (Annabelle; collectively, Spouses Ong) were the plaintiffs in Civil Case No. CEB-30882 before Branch 21, RTC, Cebu City. The case was a complaint for damages against Rosita Arcenas (respondent).⁶

Spouses Go and Spouses Ong are the registered co-owners of a house and lot situated at Rosalina Village, Brgy. Labangon, Cebu City (subject property). Prior to the filing of the complaint, Spouses Go, their children, and their parents, Gaudencio and Agatonica Go, lived in the subject property.⁷

Respondent is the owner of the lot adjacent to the subject property. Respondent constructed a retaining wall on the boundary of the two properties and a waste drain about three feet high and covered with steel

¹ *Rollo*, pp. 6-23.

² *Id.* at 27-47. Penned by Associate Justice Marilyn Lagura-Yap and concurred in by Associate Justices Emily R. Aliño-Geluz and Dorothy P. Montejo-Gonzaga.

³ *Id.* at 56-58.

⁴ *Id.* at 59-67. Penned by Presiding Judge Eric F. Menchavez.

⁵ Marites Go in some parts of the *rollo*.

⁶ *Rollo*, p. 59, RTC Decision.

⁷ *Id.* at 28, CA Decision.

bars that connects to a canal along the subject property.⁸

On July 19, 2004, at about 7:45 p.m., a heavy rainfall occurred in the area. As a result, the retaining wall collapsed causing the sudden onward gushing of water toward the subject property.⁹

On December 8, 2004, Spouses Go, joined by Spouses Ong as registered co-owners of the subject property, filed before the RTC the Complaint for Damages,¹⁰ docketed as Civil Case No. CEB-30882, against respondent. Spouses Go and Spouses Ong alleged that the water that flushed from respondent's property reached the ceiling of their house, thrashed the furniture and appliances about 100 meters away from the house, and rendered their house uninhabitable. They averred that it would cost them ₱1,322,200.00 to repair their house and that the whole family had to vacate the subject property and rent another house at ₱25,000.00 per month.¹¹

Spouses Go and Spouses Ong further alleged that their house and the belongings therein were valued at ₱9,847,816.00. Their belongings consisted of various pieces of furniture, appliances, and business equipment, such as computers, lighting systems, and professional audio system (components, speakers, microphones and band equipment, automatic voltage regulators, computer discs, vinyl, and computer digital media files). All of these were substantially damaged.¹²

Gilbert, who is engaged in the business of providing technology, advanced professional concert audio, lighting systems, professional disc jockey services for events and concerts, and rental services for audio and lighting, alleged that he lost several projects which would have made him earn the amount of ₱1,067,000.00 for the period from July 23, 2004 to August 28, 2004; and that the damages resulted in the loss of income estimated at ₱1,413,307.60.¹³

Spouses Go and Spouses Ong alleged that despite their demands for the payment of actual damages, respondent failed and refused to pay it. The matter was referred to the *barangay* for conciliation proceedings, but respondent failed to appear.¹⁴

Thus, Spouses Go and Spouses Ong prayed that respondent be ordered to pay the following: 1) the sum of ₱1,322,200.00 for the cost of repair of their house; 2) the sum of ₱25,000.00 per month from July 19, 2004 until their house shall have been repaired; 3) the sum of

⁸ Id. at 29.

⁹ Id.

¹⁰ Records, pp. 2-8.

¹¹ *Rollo*, p. 29, CA Decision.

¹² Id. at 29-30.

¹³ Id. at 30.

¹⁴ Id. at 59, RTC Decision.

₱9,847,816.00 for the loss and damage to the property and business equipment of Gilbert; 4) the sum of ₱2,480,307.60 for the loss of income of Gilbert; 5) the sum of ₱150,000.00 as attorney's fees; 6) the sum of ₱200,000.00 as litigation expenses; and 7) the costs of suit.¹⁵

In her Answer with Counterclaims, respondent denied the allegations in the complaint. She countered that the damages claimed by Spouses Go and Spouses Ong are due to their own fault and arose from their own acts. She also alleged that she and her husband acquired their property sometime in 1955 and, in 1975, fenced it with a wall constructed out of good materials in accordance with sound engineering practice.¹⁶

Respondent further averred that as the property is located below Brgy. Lomboy, she and her husband decided to put four big manholes to receive the water coming from Brgy. Lomboy and to let it freely flow to the low-lying area, where Rosalina Village is now nestled. She added that in the year 2000, the homeowners of Rosalina Village requested her son to shoulder the expenses of making a big canal so that water from their property will flow to the manhole of their subdivision.¹⁷

Respondent alleged that she hired an employee to clean the property, including sweeping the surroundings and cleaning the manholes so that they will not be flooded in case of heavy rains. However, on July 19, 2004, an exceptional downpour of heavy rains was experienced by the City of Cebu for a week. Because of the heavy rains, the wall she constructed collapsed.¹⁸

Ruling of the RTC

After trial, the RTC rendered a Decision¹⁹ dated November 10, 2014 in favor of Spouses Go and Spouses Ong. The dispositive portion of the Decision states:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the Plaintiffs and against the Defendant, ordering:

1. The Defendant to pay the Plaintiffs the amount of Php640,000.00 as actual damages for house rental expenses;
2. The Defendant to pay the Plaintiffs the amount of Php 500,000.00 as temperate damages for the damage done to Plaintiffs house, household appliances, business equipment and loss of income;

¹⁵ Id. at 30, CA Decision.

¹⁶ Id. at 30-31.

¹⁷ Id. at 31.

¹⁸ Id., CA Decision; id. at 60, RTC Decision.

¹⁹ Id. at 59-67.

3. The Defendant to pay the Plaintiffs the amount of Php150,000.00 as attorney's fees;
4. The Defendant to pay the Plaintiffs the amount of Php200,000.00 as litigation of expenses.

Cost against the Defendant.

SO ORDERED.²⁰

The RTC noted that it was respondent who built the following: 1) the retaining wall/perimeter wall between the subject property and her property; and 2) the open canal from her property that went through the portion of the wall behind the subject property which she covered with a steel barrier. In view thereof, it found that the proximate cause of the collapse of the wall was the non-flow of the water on its waterway due to respondent's failure to maintain the steel barrier that she installed. It found that the installation of the steel barrier caused the clogging because it prevented the debris and other waste materials to freely flow through the canal.²¹

Thus, in granting the award of damages in favor of Spouses Go and Spouses Ong, the RTC ruled that the collapse of the retaining wall was not due to a fortuitous event but to respondent's negligence when it failed to maintain the upkeep of the canal covered with a steel barrier that eventually caused the accident.²²

Both parties appealed to the CA.

Spouses Go and Spouses Ong prayed that the CA reverse the portion of the decision which awarded them with temperate damages in the amount of ₱500,000.00 and, in lieu thereof, grant them actual damages in the total amount of ₱13,650,323.60 covering the cost for the repair of their house, the compensation for the loss of or damage to their property, including Gilbert's business equipment, and the compensation for loss of income. Alternatively, Spouses Go and Spouses Ong prayed that the amount of temperate damages be increased to ₱11,000,000.00.²³

Meanwhile, respondent prayed that the CA set aside the RTC Decision and that she be granted her counterclaims.

Ruling of the CA

In the herein assailed Decision,²⁴ the CA denied both appeals and

²⁰ Id. at 67.

²¹ Id. at 65, RTC Decision.

²² Id.

²³ Id. at 28.

²⁴ Id. at 27-47.

affirmed the ruling of the RTC. The *fallo* of the CA Decision reads:

WHEREFORE, premises considered, the instant APPEALS are DENIED. The November 10, 2014 Decision of RTC, Branch 21 of Cebu City in Civil Case No. CEB-30882, is AFFIRMED.

SO ORDERED.²⁵ (Emphases omitted.)

In upholding the RTC, the CA held that Spouses Go and Spouses Ong have discharged the burden of proving respondent's negligence, and this negligence is not erased by the fact that it poured rain on the day of the incident. The CA also ruled that the proximate cause of the collapse of the wall and the flooding of the subject property was respondent's negligence. Hence, it found that the RTC was correct in finding respondent guilty of quasi-delict and holding her liable for damages.²⁶

The CA, however, did not grant Spouses Go and Spouses Ong's prayer for actual damages in the amount of ₱13,650,323.60 in lieu of the temperate damages awarded by the RTC, or in the alternative, that the award of temperate damages be increased to ₱11,000,000.00.

Not satisfied, herein petitioners, Gilbert and Annabelle, filed the present petition.

Petitioners assert that the CA erred in ruling that the pieces of evidence that Spouses Go and Spouses Ong presented—*insurance policies, official receipts, deposit slips, delivery receipts, charge invoices, sales invoices, billing statements, acknowledgment receipts, and statements of accounts*—are not concrete evidence to prove the amount of actual damages they incurred.²⁷

Petitioners also averred that the award of temperate damages should be increased considering that they were able to establish the amount of actual damages to their house, household appliances, and business equipment, as well as the income that they lost.²⁸

In her Comment,²⁹ respondent countered that the documentary evidence and narration of facts that petitioners repetitively presented and mentioned were already tackled and resolved by the RTC and the CA; and petitioners have not introduced anything new to warrant the increase of actual damages or temperate damages.

²⁵ Id. at 47.

²⁶ Id. at 42-45.

²⁷ Id. at 10, Petition for Review on *Certiorari*.

²⁸ Id. at 16.

²⁹ Id. at 70-73.

Issue

The issue before the Court is whether petitioners are entitled to their claim of actual damages in the amount of ₱9,847,816.00 for the damage to their house, household appliances, and business equipment, and for their loss of income; or, in the alternative, whether the amount of temperate damages awarded to them by the RTC should be increased to ₱4,000,000.00, as prayed for in the present petition.

Our Ruling

The Court partially grants the petition.

Both the RTC and the CA held that respondent was liable for the damages caused to the subject property due to her negligence in maintaining the retaining wall which resulted in the collapse thereof. As found by the RTC, respondent covered her open canal, which traversed her property through the portion of the wall at the back of the subject property with a steel barrier made of rebar as filter. Therefore, she had the duty to maintain or clean the steel barrier which she installed. Because the water was not able to flow out, it went back to the open canal on the side of her property and stayed along the side of the wall. This caused the loosening and softening of the soil, on which the foundation of the wall rested, causing the retaining wall to collapse.

The CA agreed with the RTC and ruled that the heavy rainfall on the day of the incident does not negate the fact of respondent's negligence. It was the proximate cause of the collapse of the wall and the flooding on petitioners' place.

The Court finds no reason to disturb the findings of both the RTC and the CA.

It is well settled that the function of the Court in petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law that may have been committed by the lower courts.³⁰ Factual questions are not the proper subject of an appeal by *certiorari*.³¹ As a matter of sound practice and procedure, the Court defers and accords finality to the factual findings of trial courts.³² To do otherwise would defeat the very essence of Rule 45 and would convert the Court into a trier of facts, which is not its intended purpose under the law.³³

³⁰ *Heirs of Teresita Villanueva v. Heirs of Petronila Syquia Mendoza*, 810 Phil. 172, 177-178 (2017).

³¹ *Sps. Miano v. Manila Electric Company*, 800 Phil. 118, 119 (2016).

³² *Id.* at 125.

³³ *Id.*

Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the CA are binding upon this Court.³⁴ Absent any showing that the findings of the lower courts are baseless or erroneous as to constitute palpable error or grave abuse of discretion, the Court will refrain from analyzing and weighing the evidence all over again.³⁵ While there are well settled exceptions to the general rule, none of the exceptions to justify the reevaluation of the findings of fact of both the trial court and the CA are present in this case.

On the contrary, the findings of fact of the RTC, as affirmed by the CA, are well-supported by the evidence on record. The Court agrees that the collapse of the retaining wall was not due to a fortuitous event but to respondent's negligence in failing to maintain the upkeep of the canal which clogged the drain and eventually caused the flooding in the subject property. Consequently, respondent is liable for damages.

Negligence is the failure to observe for the protection of the interest of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.³⁶ In order for liability from negligence to arise, there must be not only proof of damage but also proof that the damage was the consequence of the negligence.³⁷ Article 2176 of the Civil Code of the Philippines (Civil Code) defines *quasi-delict* as follows:

Art. 2176. Whoever by act or omission causes damages to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

The CA had clearly explained its basis for finding respondent negligent. The Court quotes it with approval:

In this case, plaintiffs-appellant's have discharged their burden of proving that the defendant-appellant was indeed guilty of negligence. They have particularly shown that the requisites for quasi-delict are attendant, thus:

First, with regard to the damage or injury, evidence is replete to show that plaintiffs-appellants suffered damages due to the incident on July 19, 2004. The pictures and videos, particularly Exhibits D, E, F I, J and their series proffered by plaintiffs-appellants, together with the testimonies of their witnesses, proved plaintiffs-appellants allegations in their complaint to the fact of the loss and damages of their house,

³⁴ Id.

³⁵ *Maitem v. Cabrera*, G.R. No. 240271 (Notice), March 3, 2021, citing *Abobon v. Abobon*, 692 Phil. 530, 543 (2012).

³⁶ *Dela Cruz v. Capt. Octaviano*, 814 Phil. 891, 902 (2017), citing *Philippine National Railways Corp., et al. v. Vizcara, et al.*, 682 Phil. 343, 352 (2012), further citing *Layugan v. Intermediate Appellate Court*, 249 Phil. 363, 373 (1988).

³⁷ Id. at 904.

personal things, business equipment, household furniture, and appliances.

Second, with regard to the wrongful act or omission imputable to defendant-appellant, evidence is preponderant to demonstrate negligence on her part. The RTC was correct to point out that the collapsed wall was owned by defendant-appellant and built on her property. It was therefore defendant-appellant's responsibility to maintain the wall. While defendant-appellant built an open canal for the water to flow freely and not stay alongside the wall, defendant-appellant covered the canal with a steel barrier. The records reveal that defendant-appellant failed to maintain the cleanliness of the steel barrier so when the heavy rain poured, the rainwater was not able to flow through the clogged barrier, rather it seeped through the side of the wall, causing the loosening and softening of the wall's foundation and the eventual collapse of the wall.

With regard to the third requisite, that there be a direct relation of cause and effect between the damage or injury and the fault of negligence, this is clearly present in the case at bench.

x x x x

The last requisite is that there be no pre-existing contractual relation between the parties. It is undeniable that plaintiffs-appellants and defendant-appellant had no prior contractual relation, before the incident happened.

With the concurrence of the above-mentioned requisites, the RTC was correct in finding defendant-appellant guilty of quasi-delict. Defendant-appellant is indeed liable to plaintiffs-appellants for damages. We therefore deny defendant-appellant's appeal and refuse to grant her counterclaim."³⁸

Anent the damages, the Court affirms the award of actual damages but modifies the award of temperate damages.

Article 2199 of the Civil Code defines actual or compensatory damages as follows:

Art. 2199. Except as provided by law or by stipulation, one is entitled to adequate compensation only for such pecuniary loss suffered as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Actual damages constitute compensation for sustained pecuniary loss. It is compensation for an injury that will put the injured party in the position where it was before the injury.³⁹ Actual damages pertain to such injuries or losses that are actually sustained and susceptible of measurement.⁴⁰ A party may only be awarded actual damages when the pecuniary loss he or she had suffered was duly proven.

³⁸ *Rollo*, pp. 42-45.

³⁹ *Guy v. Tulfo*, 851 Phil. 748, 764 (2019).

⁴⁰ *Id.*, citing *International Container Terminal Services, Inc. v. Chua*, 730 Phil. 475, 489 (2014).

In seeking to increase their claim for actual damages, petitioners are praying that the Court review, reevaluate, and weigh the probative value of the evidence adduced before the lower courts to determine the exact amount of actual damages. However, it is not the Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.⁴¹

Although petitioners have clearly shown that there was damage to their property as shown in the photographs submitted, they however failed to satisfactorily prove with certainty the actual amount of damages incurred. In determining actual damages, one cannot rely on mere assertions, speculations, conjectures, or guesswork but must depend on competent proof and the best evidence obtainable regarding specific facts that could afford some basis for measuring compensatory or actual damages.⁴² Contrary to petitioners' assertion, the evidence they presented and the quotations for reconstruction costs, which they submitted without actual receipts, are insufficient to support their claim for actual damages in the amount of ₱9,847,816.00. However, as regards the claim for rental expenses, the RTC, as affirmed by the CA, properly awarded actual damages in the amount of ₱640,000.00 as petitioners were able to duly prove such claim.

In the case of *PNOC Shipping Corp. v. Court of Appeals*,⁴³ the Court explained the concept of actual damages, to wit:

Under Article 2199 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted and not to impose a penalty. **In actions based on torts or quasi-delicts, actual damages include all the natural and probable consequences of the act or omission complained of.** There are two kinds of actual and compensatory damages: one is the loss of what a person already possesses (*daño emergente*), and the other is the failure to receive as a benefit that which would have pertained to him (*lucro cesante*). x x x

Based on the foregoing, the need for petitioners to make alternative living arrangements because their house was rendered uninhabitable is a natural and probable consequence of respondent's quasi-delict, which renders the latter liable for the rental expense.

As to the award of temperate damages, the Court increases the amount from ₱500,000.00 to ₱2,500,000.00 considering the extent of the damages caused to petitioners. Temperate damages may be allowed in cases where definite proof of pecuniary loss cannot be adduced but the court is convinced that the aggrieved party suffered some pecuniary loss.

⁴¹ *Joseph v. Spouses Joseph*, G.R. No. 234384, April 26, 2021, citing *Spouses Miano v. Manila Electric Company*, 800 Phil. 118, 122 (2016), further citing *Quintos v. Nicolas*, 736 Phil. 438, 451 (2014).

⁴² *De Guzman v. Tumolva*, 675 Phil. 808, 818 (2011). Citations omitted.

⁴³ 358 Phil. 38, 52-53 (1998). Citations omitted.

In such instances, the amount of the award must be reasonable and shall be left to the discretion of the courts according to the circumstances of the case.⁴⁴

Undoubtedly, petitioners suffered pecuniary loss by reason of respondent's negligence. They have proven that they sustained damages in their house, household appliances, and business equipment, as well as for their loss of income. However, under the circumstances, because of their failure to prove the exact amount of damages they sustained, the Court deems it just and reasonable to award them temperate damages in the amount of ₱2,500,000.00 taking into account all the damages, expenses, and losses they sustained, as well as other necessary expenses, they incurred as a result of the collapse of the retaining wall.

The award of attorney's fees in the amount of ₱150,000.00 and litigation expenses in the amount of ₱200,000.00 is affirmed.

Lastly, pursuant to the Court's ruling in *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*,⁴⁵ all the monetary awards shall be subject to legal interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

WHEREFORE, the petition for review on *certiorari* is **PARTIALLY GRANTED**. The Decision dated June 27, 2019 and the Resolution dated October 22, 2020 of the Court of Appeals in CA-G.R. CV No. 06479 are hereby **AFFIRMED** with **MODIFICATION**. Respondent Rosita Arcenas is ordered to pay petitioners Gilbert Y. Go and Annabelle G. Ong the following:

- 1) Actual damages in the amount of ₱640,000.00;
- 2) Temperate damages in the amount of ₱2,500,000.00;
- 3) Attorney's fees in the amount of ₱150,000.00; and
- 4) Litigation expenses in the amount of ₱200,000.00.

All the monetary awards shall be subject to legal interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

⁴⁴ *Rep. of the Phils. v. Looyuko*, 788 Phil. 1, 17 (2016).

⁴⁵ G.R. No. 225433, August 28, 2019.

SO ORDERED.”

By authority of the Court:

Misael DC Batt
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