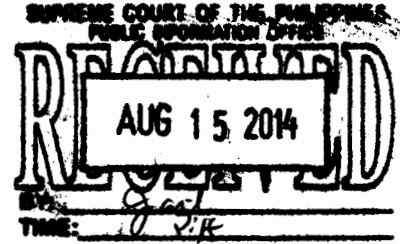




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated August 4, 2014, which reads as follows:*

**“G.R. No. 212725 (Jopauen Realty Corporation vs. Sps. Jacinto P. Dominguez and Eliza G. Dominguez, Phil. Missionary Institute, Inc., Municipality of Dasmariñas, Cavite, Land Registration Authority and Register of Deeds for the Province of Cavite). – This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court.**

On March 21, 2003, Jopauen Realty Corporation (Jopauen Realty) filed a Complaint for specific performance and damages against respondents claiming that the Sps. Jacinto and Eliza Dominguez (Sps. Dominguez) and the Phil. Missionary Institute (PMI) conspired to block its immediate access to the Bagong Bayan Road or private way, thus, depriving it of direct access to said road and causing substantial and undeserved inconvenience. The case was docketed as Civil Case No. 2804 and raffled to Branch 20 of the Regional Trial Court of Imus, Cavite (RTC).

Jopauen Realty narrated that, in 1981, it acquired a parcel of land in Dasmariñas, Cavite covered by TCT No. T-119958. At the time of the acquisition, its lot was bounded on the south by the Bagong Bayan Road, a public highway or private road, as seen in the DENR-Region IV Projection Map of Dasmariñas, Cavite and the Vicinity/Survey Plan of its lot. In 2001, Jopauen Realty learned that the Sps. Dominguez acquired a 185 sqm. property (subject property) which abutted the southern boundary of their property. Thereafter, the subject property was transferred to Philippine Missionary Institute, Inc. (PMI) and TCT No. T-373471 was issued to the latter. Jopauen Realty further claimed that the subject property was wholly part of Bagong Bayan Road which was constructed by the State and intended for public use and service. It also alleged that the TCTs covering the subject lot failed to state the statutory lien or encumbrance imposed by law, particularly the existence and public use of the Bagong Bayan Road. Jopauen Realty also insisted that the Municipality of Dasmariñas (Municipality), the Land Registration Authority (LRA) and the Register of Deeds for the Province of Cavite (RD) failed to take proper action to preserve, maintain, and protect public interest over the Bagong Bayan Road or private road and seemed to have tolerated the illegal acts of the Sps.

August 4, 2014

Dominguez and PMI, thereby defeating public interest over the Bagong Bayan Road or private road.

In its Complaint, Jopauen Realty prayed that: (1) Sps. Dominguez and PMI be held solidarily liable to pay it damages of Two Million Pesos (PhP 2,000,000.00) plus One Million Four Hundred Thousand Pesos (PhP 1,400,000.00) as attorney's fees; (2) Sps. Dominguez and PMI be ordered to respect and maintain the statutory lien/encumbrance of the subject property concerning the continued existence and public use of the Bagong Bayan Road; and (3) the LRA and RD protect the statutory lien/encumbrance over the subject property by causing the immediate annotation of the statutory lien/encumbrance on TCT No. T-373471.

In their Answer with Compulsory Counterclaim, the Sps. Dominguez and PMI countered that Jopauen Realty fully knew by its title and subdivision plan that its property, Lot 3544-A, had no access to the national road. As stated in its title, the boundaries of the said property are as follows:

A parcel of land (Lot 3544-A of the subd. Plan (LRC) Psd-196977 x x x. Bounded on the W., pts. 1-4 by Creek, on the N.E., and S. pts. 4-5-6 by Lot 3544-B of the subd. plan x x x containing an area of FIVE THOUSAND (5,000) SQUARE METERS, more or less. x x x

They also alleged that Jopauen Realty knew that the boundaries of the subject property, Lot 3544-B-1-B-4 owned by PMI, are as follows:

A parcel of land (Lot 3544-B-1-B-4 of the subd. plan (LRC) Psd-330561, approved as a non-subd. project x x x. Bounded on the N., pts 2 to 3 by Lot 3544-A (LRC) Psd-196977; on the E., pts. 3 to 4 by Lot 3544-B-1-B-5, of the subd. plan; on the S., pts. 4 to 1 by National Road (40.0 m. wide); and on the SW., pts. 1 to 2 by Creek. x x x

Further, the Sps. Dominguez and PMI argued that Jopauen Realty should have bought the entire Lot No. 3544 from the original owner, or at least the remaining portion of Lot 3544-B adjoining the National Road not owned by PMI, knowing that it did not have access to the same. Instead, Jopauen Realty converted the creek situated on the western portion into dry land and has occupied the same, without prior knowledge and consent of government agencies. As counter claim, they also demanded an aggregate sum of Ten Million Pesos (PhP 10,000,000.00) as damages and attorney's fees.

On September 8, 2004, an ocular inspection was conducted which found that the subject property impeded Jopauen Realty's access to the national road. The ocular inspection yielded the following findings:

The disputed property lies between plaintiff's property and the national road. Technically, the said lot impedes plaintiff's access to the national road. Ingress and egress to plaintiff's property is through a strip of land which abuts the bordering creek and which was allegedly formed by natural accretion.

August 4, 2014

It was observed that the adjoining properties, both westward and eastward, constructed their buildings along the same property line as that of plaintiff although their frontage is devoted as parking areas. It was, likewise, noted that the fences of these adjoining properties embrace the alleged "old road."

On May 4, 2010, the RTC rendered a Decision dismissing the Complaint. It found that Jopauen Realty did not have the legal personality to institute an action for reversion. It also ordered Jopauen Realty to pay the Sps. Dominguez moral damages of Thirty Thousand Pesos (PhP 30,000.00), exemplary damages of Twenty Thousand Pesos (PhP 20,000.00) and Twenty Thousand Pesos (PhP 20,000.00) as attorney's fees. Jopauen Realty was also directed to pay PMI attorney's fees of Twenty Thousand Pesos (PhP 20,000.00).

Aggrieved, Jopauen Realty appealed its case to the Court of Appeals (CA) and argued that the trial court erred in: (1) ruling that the case is one for reversion of public land; (2) not finding that the action is one for the establishment of an easement of right of way; (3) concluding that it already has access to the Bagong Bayan Road; (4) finding that it had no legal standing to institute the Complaint; (5) applying the case of *Saad Agro-Industries vs. Republic*; and (6) ordering it to pay the Sps. Dominguez and PMI damages and attorney's fees

The CA<sup>1</sup> affirmed the RTC decision but deleted its award of moral and exemplary damages in favor of the Sps. Dominguez. While the CA agreed that the case was not one of reversion of public land but one for the enforcement of a right of way, the CA found that Jopauen Realty failed to prove its entitlement to a compulsory easement of a right of way because an outlet already exists, in particular, a strip of land by the creek, which leads to Bagong Bayan Road. The CA held:

Granting that plaintiff-appellant has legal standing to file the present case, it has to prove the basis for the enforcement of a right of way in its' (sic) favor. To be entitled to a compulsory easement of a right of way, the preconditions provided under Arts. 649 and 650 of the Civil Code must be established. These are: (1) that the dominant estate is surrounded by other immovable and has no adequate outlet to a public highway; (2) that proper indemnity has been paid; (3) that the isolation was not due to acts of the proprietor of the dominant estate; (4) that the right of way claimed is at a point least prejudicial to the servient estate and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

In the case at bar, the first element is clearly absent. As stated in the Commissioner's report, an outlet already exists, a strip of land which abuts the bordering creek, which in turn leads to Bagong Bayan Road. As found by the trial court, plaintiff-appellant is using another parcel of land

---

<sup>1</sup> In a Decision promulgated on October 30, 2013 in CA-G.R. CV No. 95843 by the Sixth Division of the CA, penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon.

August 4, 2014

as its access road to Bagong Bayan road, although the same is not the direct or shortest route.

On the question of adequacy of the existing outlet, plaintiff-appellant alleges that an active creek cannot be considered as an adequate outlet, considering that a creek cannot be appropriated by any private person, otherwise, any construction thereon shall always be at the pain of being reclaimed by the State, or worse, by nature itself. In his testimony, Dr. Paulo S. Campos, Sr. admitted that when he bought the property, the creek was already dead. Furthermore, the creek has been paved out, which plaintiff-appellant has utilized as its own road right of way. Thus, considering that plaintiff-appellant has an adequate outlet, there is no basis to justify the imposition of an easement of right of way on defendants-appellees' property because it would run counter to the prevailing jurisprudence that mere convenience for the dominant estate does not suffice to serve as basis for an easement.

Hence, this petition.

The issue in this case is whether the CA erred in affirming the dismissal of Jopauen Realty's Complaint.

Jopauen Realty insists that the CA erred in not finding that its supposed access road by the creek violates several laws such as P.D. 953, which requires the demolition of structures on creeks, and R.A. No. 7279 or the Urban Development and Housing Act (UDHA), which declares unlawful the construction of any structures in danger areas. Jopauen Realty also asserted that the said access road may be considered a nuisance that may be removed at any time by public authorities.

The CA did not err in affirming the dismissal of the Complaint.

Findings of fact of the trial court, especially when affirmed by the appellate court, are entitled to great weight and respect. It is not the function of this Court to re-examine findings of fact of the appellate court unless said findings are not supported by the evidence on record or the judgment is based on a misapprehension of facts.

Both the trial and appellate courts found that Jopauen Realty filed the case to have a direct access to the Bagong Bayan Road notwithstanding the fact that it has been using another access road for a considerable period of time.

Jopauen Realty failed to show sufficient factual evidence that the requirements under Articles 649 and 650 of the Civil Code were present to justify the grant of an easement in its favor.

It must be stressed that, by its very nature, and when considered with reference to the obligations imposed on the servient estate, an easement involves an abnormal restriction on the property rights of the servient owner and is regarded as a charge or encumbrance on the servient estate. It is

incumbent upon the owner of the dominant estate to establish by clear and convincing evidence the presence of all the preconditions before his claim for easement of right of way may be granted.

Admittedly, Jopauen Realty already has a right of way through a road abutting a creek. Clearly, there is an existing outlet to and from the public road. However, Jopauen Realty claims that the access road, being beside the creek, may be considered a public nuisance and, thus, may be ordered to be abated. Further, it points out that there is danger that the same would be flooded considering its proximity to the creek. However, it has not presented sufficient proof for its claims.

Well-entrenched is the doctrine that in order to justify the imposition of an easement of right of way, there must be real, not fictitious or artificial, necessity for it. Mere convenience for the dominant estate is not what is required by law as the basis of setting up a compulsory easement. Even in the face of necessity, if it can be satisfied without imposing the easement, the same should not be imposed.<sup>2</sup>

As to the award of attorney's fees, We find that the same is justified under Art. 2208 (11) of the Civil Code, as this is a situation wherein it is just and equitable that attorney's fees should be recovered. The Sps. Dominguez and PMI both incurred legal expenses to defend their interests due to the complaint filed by Jopauen Realty, from the trial court level to the Court of Appeals and then finally to this Court, for which they deserve compensation. The attorney's fees awarded, however, are inadequate to compensate the Sps. Dominguez and PMI, and should be increased accordingly for each party, from PhP 20,000.00 to PhP 50,000.00.

Considering the allegations, issues and arguments presented, the Court resolves to **DENY** the petition for failure to show that the Court of Appeals committed any reversible error in its assailed Decision dated October 30, 2013 as to warrant the exercise of the Court's appellate jurisdiction.

**IN VIEW OF THE FOREGOING**, the Court **AFFIRMS** the Decision of the Court of Appeals dated October 30, 2013 in CA-G.R. CV No. 95843 with the **MODIFICATION** that the attorney's fees of PhP 20,000.00 in favor of the Sps. Dominguez is increased to PhP 50,000.00 and the attorney's fees of PhP 20,000.00 in favor of PMI is increased to PhP 50,000.00. (**Villarama, Jr., J.**, designated Acting Member per Special Order No. 1691 dated May 22, 2014.)

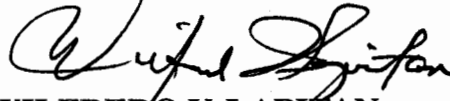
---

<sup>2</sup> *Dichoso, Jr. v. Marcos*, G.R. No. 180282, April 11, 2011, 647 SCRA 495.

August 4, 2014

**SO ORDERED.”**

Very truly yours,



**WILFREDO V. LAPITAN**

*Division Clerk of Court*  
8/10/14

Atty. Teodoro Kalaw IV  
Counsel for Petitioner  
KALAW SY SELVA & CAMPOS  
West Tower 2106 A, PSE Centre  
Exchange Road, Ortigas Center  
1605 Pasig City

COURT OF APPEALS  
CA G.R. CV No. 95843  
1000 Manila

OFFICE OF THE SOLICITOR GENERAL  
134 Amorsolo Street  
Legaspi Village, 1229 Makati City

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 20, Imus, 4103 Cavite  
(Civil Case No. 2804-03)

Atty. Jacinto P. Dominguez  
DOMINGUEZ AND ASSOCIATES  
Room 201, DRB Building  
Aguinaldo Highway, Palacio  
Imus, 4103 Cavite

LAND REGISTRATION AUTHORITY  
East Avenue, Diliman  
1101 Quezon City

REGISTER OF DEED  
Province of Cavite

Office of the Mayor  
Municipality of Dasmariñas  
Municipal Hall, Dasmariñas  
4114 Cavite

PUBLIC INFORMATION OFFICE  
Supreme Court, Manila

LIBRARY SERVICES  
Supreme Court, Manila

Judgment Division  
JUDICIAL RECORDS OFFICE  
Supreme Court, Manila