



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LINDA RANA,

Petitioner,

G.R. No. 192861

- versus -

TERESITA LEE WONG, SPS.
SHIRLEY LEE ONG and RUBEN
ANG ONG, represented by their
Attorney-in-fact WILSON UY, and
SPS. ROSARIO and WILSON UY,
Respondents.

X-----X

SPS. ROSARIO and WILSON UY,
WILSON UY as attorney-in-fact of
TERESITA LEE WONG, and SPS.
SHIRLEY LEE ONG and RUBEN
ANG ONG,

Petitioners,

G.R. No. 192862

Present:

BRION, J., Acting Chairperson,*
PERALTA,**
DEL CASTILLO,
MENDOZA,*** and
PERLAS-BERNABE, JJ.

- versus -

SPS. REYNALDO and LINDA
RANA,

Respondents.

Promulgated:

JUN 30 2014 *dlm Cabalag for Jacto*

X-----X

DECISION

PERLAS-BERNABE, J.:

* Designated Acting Chairperson per Special Order No. 1699 dated June 13, 2014.
** Designated Acting Member per Special Order No. 1712 dated June 23, 2014.
*** Designated Acting Member per Special Order No. 1696 dated June 13, 2014.

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Assailed in these consolidated petitions for review on *certiorari*¹ are the Decision² dated July 13, 2005 and the Resolution³ dated June 18, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 78463 which affirmed the Decision⁴ dated December 20, 2002 of the Regional Trial Court of Cebu City, 7th Judicial Region, Branch 22 (RTC) in Civil Case Nos. CEB-20893 and CEB-21296.

The Facts

Teresita Lee Wong (Wong) and Spouses Shirley and Ruben Ang Ong (Sps. Ong) are co-owners *pro-indiviso* of a residential land situated in Peace Valley Subdivision, Lahug, Cebu City, covered by Transfer Certificate of Title (TCT) No. 139160⁵ (Wong-Ong property), abutting⁶ a 10-meter⁷ wide subdivision road (subject road).

On the opposite side of the subject road, across the Wong-Ong property, are the adjacent lots of Spouses Wilson and Rosario Uy (Sps. Uy) and Spouses Reynaldo and Linda Rana (Sps. Rana), respectively covered by TCT Nos. 124095⁸ (Uy property) and T-115569⁹ (Rana property). The said lots follow a rolling terrain¹⁰ with the Rana property standing about two (2) meters¹¹ higher than and overlooking the Uy property, while the Wong-Ong property is at the same level with the subject road.¹²

Sometime in 1997, Sps. Rana elevated and cemented a portion of the subject road that runs between the Rana and Wong-Ong properties (subject portion) in order to level the said portion with their gate.¹³ Sps. Rana likewise backfilled a portion (subject backfilling) of the perimeter fence separating the Rana and Uy properties without erecting a retaining wall that would hold the weight of the added filling materials. The matter was referred to the Office of the Barangay Captain of Lahug¹⁴ as well as the Office of the Building Official of Cebu City (OBO),¹⁵ but to no avail.¹⁶

¹ *Rollo* (G.R. No. 192861), pp. 5-26; *rollo* (G.R. No. 192862), pp. 3-32.

² *Rollo* (G.R. No. 192861), pp. 72-90; *rollo* (G.R. No. 192862), pp. 38-55. Penned by Executive Justice Mercedes Gozo-Dadole, with Associate Justices Sesinando E. Villon and Ramon M. Bato, Jr., concurring.

³ *Rollo* (G.R. No. 192861), pp. 102-105; *rollo* (G.R. No. 192862), pp. 57-60. Penned by Associate Justice Agnes Reyes Carpio, with Associate Justices Edgardo L. delos Santos and Eduardo B. Peralta, Jr., concurring.

⁴ *Rollo* (G.R. No. 192861), pp. 63-70; *rollo* (G.R. No. 192862), pp. 130-137. Penned by Judge (now Court of Appeals Justice) Pampio A. Abarintos.

⁵ *Rollo* (G.R. No. 192861), p. 35 (including the dorsal portion); *rollo* (G.R. No. 192862), pp. 119-120.

⁶ *Rollo* (G.R. No. 192861), p. 63.

⁷ See RTC Order in Civil Case No. CEB-20893; *rollo* (G.R. No. 192861), p. 50.

⁸ *Rollo* (G.R. No. 192861), p. 37 (including the dorsal portion); *rollo* (G.R. No. 192862), pp. 123.

⁹ *Rollo* (G.R. No. 192861), p. 36; *rollo* (G.R. No. 192862), pp. 121-122.

¹⁰ *Rollo* (G.R. No. 192861), p. 64; *rollo* (G.R. No. 192862), p. 40.

¹¹ *Rollo* (G.R. No. 192861), p. 50.

¹² *Rollo* (G.R. No. 192861), p. 74; *rollo* (G.R. No. 192862), p. 40.

¹³ *Rollo* (G.R. No. 192861), pp. 64 and 74; *rollo* (G.R. No. 192862), p. 131.

¹⁴ *Rollo* (G.R. No. 192861), p. 38.

¹⁵ See Certification to file action [in court] issued by OBO; *rollo* (G.R. No. 192862), p. 124.

¹⁶ *Rollo* (G.R. No. 192861), pp. 74-75; *rollo* (G.R. No. 192862), pp. 40-41.

The RTC Proceedings

On September 19, 1997, Wong, Sps. Ong, and Sps. Uy (Wong, *et al.*) filed a Complaint¹⁷ for Abatement of Nuisance with Damages against Sps. Rana before the RTC, docketed as **Civil Case No. CEB-20893**, seeking to: (a) declare the subject portion as a nuisance which affected the ingress and egress of Wong and Sps. Ong to their lot “in the usual and [normal] manner, such that they now have to practically jump from the elevated road to gain access to their lot and scale the same elevation in order to get out”;¹⁸ (b) declare the subject backfilling as a nuisance considering that it poses a clear and present danger to the life and limb of the Uy family arising from the premature weakening of Sps. Uy’s perimeter fence due to the seeping of rain water from the Rana property that could cause its sudden collapse;¹⁹ (c) compel Sps. Rana to restore the subject portion to its original condition; (d) compel Sps. Rana to remove the backfilling materials along Sps. Uy’s perimeter fence and repair the damage to the fence; and (e) pay moral and exemplary damages, attorney’s fees, litigation expenses, and costs of suit.²⁰

In their Answer dated October 23, 1997,²¹ Sps. Rana countered that prior to the construction of their residence, there was no existing road and they merely developed the subject portion which abuts their gate in view of the rolling terrain. They claimed that Wong and Sps. Ong do not have any need for the subject portion because their property is facing an existing road, *i.e.*, Justice Street. They likewise denied having undertaken any backfilling along the boundary of the Uy property considering the natural elevation of their own property, which renders backfilling unnecessary.²²

After the filing of Sps. Rana’s Answer, Wong, *et al.*, in turn, filed a Motion for Leave to be Allowed to Bring in Heavy Equipment²³ for the intermediate development of the Wong-Ong property with a view to the use of the subject road as access to their lot. Notwithstanding Sps. Rana’s opposition, the RTC granted Wong, *et al.*’s motion in an Order²⁴ dated November 27, 1997 (November 27, 1997 Order), the dispositive portion of which reads as follows:

WHEREFORE, as prayed for, the motion is hereby GRANTED. Consequently, the plaintiffs are hereby allowed to use heavy equipments/machineries in order to develop the area and make use of the right of way which is located between the [Wong-Ong and Rana properties]. (Emphasis supplied)

¹⁷ Rollo (G.R. No. 192861), pp. 28-34; rollo (G.R. No. 192862), pp. 112-118.

¹⁸ Rollo (G.R. No. 192861), p. 30; rollo (G.R. No. 192862), p. 114.

¹⁹ Rollo (G.R. No. 192861), p. 31; rollo (G.R. No. 192862), p. 115.

²⁰ Rollo (G.R. No. 192861), pp. 32-33; rollo (G.R. No. 192862), pp. 116-117.

²¹ Rollo (G.R. No. 192861), pp. 39-43; rollo (G.R. No. 192862), pp. 125-129.

²² Rollo (G.R. No. 192861), pp. 38-40; rollo (G.R. No. 192862), pp. 125-126.

²³ Rollo (G.R. No. 192861), pp. 46-47.

²⁴ Id. at 51.

Despite the limited tenor of the November 27, 1997 Order, Wong, *et al.*, on May 23 and 24, 1998, proceeded to level the subject portion, which, in the process, hampered Sps. Rana's ingress and egress to their residence, resulting too to the entrapment of their vehicle inside their garage.²⁵ Feeling aggrieved, Sps. Rana, on June 19, 1998, filed a Supplemental Answer,²⁶ praying for: (a) the restoration of the soil, boulders, grade, contour, and level of the subject portion; and (b) payment of moral damages, actual and consequential damages, and exemplary damages.

Meanwhile, on December 8, 1997, Sps. Rana filed with another branch of the same trial court a Complaint²⁷ for Recovery of Property and Damages against Sps. Uy, docketed as **Civil Case No. CEB-21296**. They alleged that in October 1997, they caused a resurvey of their property which purportedly showed that Sps. Uy encroached upon an 11-square meter (sq. m.) portion along the common boundary of their properties. Their demands for rectification as well as barangay conciliation efforts were, however, ignored. Thus, they prayed that Sps. Uy be ordered to remove their fence along the common boundary and return the encroached portion, as well as to pay moral damages, attorney's fees, and litigation expenses. After the filing of Sps. Rana's complaint, Civil Case No. CEB-21296 was consolidated with Civil Case No. CEB-20893.²⁸

In response thereto, Sps. Uy filed an Answer with Counterclaim,²⁹ averring that prior to putting up their fence, they caused a relocation survey of their property and were, thus, confident that their fence did not encroach upon the Rana property. In view of Sps. Rana's complaint, they then caused another relocation survey which allegedly showed, however, that while they encroached around 3 sq. m. of the Rana property, Sps. Rana intruded into 7 sq. m. of their property. Hence, they posited that they had "a bigger cause than that of [Sps. Rana] in [so] far as encroachment is concerned."³⁰ Accordingly, they prayed for the dismissal of Sps. Rana's complaint with counterclaim for damages, attorney's fees, and litigation expenses.

In light of the foregoing, the RTC appointed three (3) commissioners to conduct a resurvey of the Uy and Rana properties for the purpose of determining if any encroachment occurred whatsoever.³¹

The RTC Ruling

On December 20, 2002, the RTC rendered a Decision³² in the consolidated cases.

²⁵ *Rollo* (G.R. No. 192861), p. 84; *rollo* (G.R. No. 192862), p. 49.

²⁶ *Rollo* (G.R. No. 192861), pp. 52-55.

²⁷ *Id.* at 57-60.

²⁸ See RTC Order dated April 6, 1998 signed by Judge Ireneo Lee Gako, Jr.; *id.* at 61-62.

²⁹ Records, pp. 154-156.

³⁰ *Id.* at 155.

³¹ See RTC Order dated February 21, 2000 signed by Judge Pampio A. Abarintos; *id.* at 246.

³² *Rollo* (G.R. No. 192861), pp. 63-70; *rollo* (G.R. No. 192862), pp. 130-137.

In **Civil Case No. CEB-20893**, the RTC found that: (a) Sps. Rana, without prior consultation with the subdivision owner or their neighbors, developed to their sole advantage the subject portion consisting of one-half of the width of the 10-meter subject road by introducing filling materials, and rip rapping the side of the road; (b) the said act denied Wong and Sps. Ong the use of the subject portion and affected the market value of their property; (c) Sps. Uy have no intention of using the subject portion for ingress or egress considering that they built a wall fronting the same; and (d) Wong, *et al.*'s manner of enforcing the November 27, 1997 Order caused damage and injury to Sps. Rana and amounted to bad faith. In view of these findings, the RTC declared that the parties all acted in bad faith, and, therefore, no relief can be granted to them against each other.³³

Separately, however, the RTC found that the backfilling done by Sps. Rana on their property exerted pressure on the perimeter fence of the Uy property, thereby constituting a nuisance. As such, the former were directed to construct a retaining wall at their own expense.³⁴

Meanwhile, in **Civil Case No. CEB-21296**, the RTC, despite having adopted the findings of Atty. Reuel T. Pintor (Atty. Pintor) – a court-appointed commissioner who determined that Sps. Uy encroached the Rana property by 2 sq. m³⁵ – dismissed both the complaint and counterclaim for damages because of the failure of both parties to substantiate their respective claims of bad faith against each other.³⁶

Dissatisfied with the RTC's verdict, the parties filed separate appeals with the CA.

The CA Ruling

On July 13, 2005, the CA rendered a Decision³⁷ affirming the RTC.

With respect to **Civil Case No. CEB-20893**, the CA found that (a) Sps. Rana's act of elevating and cementing the subject portion curtailed the use and enjoyment by Wong and Sps. Ong of their properties; (b) the undue demolition of the subject portion by Wong, *et al.* hampered Sps. Rana's ingress and egress to their residence and deprived them of the use of their vehicle which was entrapped in their garage; and (c) both parties were equally at fault in causing damage and injury to each other and, thus, are not entitled to the reliefs sought for.³⁸

³³ *Rollo* (G.R. No. 192861), pp. 68-69; *rollo* (G.R. No. 192862), pp. 135-136.

³⁴ *Id.*

³⁵ *Rollo* (G.R. No. 192861), p. 67; *rollo* (G.R. No. 192862), p. 134.

³⁶ *Rollo* (G.R. No. 192861), pp. 69-70; *rollo* (G.R. No. 192862), pp. 136-137.

³⁷ *Rollo* (G.R. No. 192861), pp. 72-90; *rollo* (G.R. No. 192862), pp. 38-55.

³⁸ *Rollo* (G.R. No. 192861), p. 84; *rollo* (G.R. No. 192862), p. 49.

On the other hand, the CA found that the backfilling done by Sps. Rana on their property requires necessary works to prevent it from jeopardizing someone's life or limb.³⁹

As for **Civil Case No. CEB-21296**, the CA sustained the dismissal of the complaint as well as the parties' respective claims for damages for lack of legal and factual bases.⁴⁰

The parties filed separate motions for reconsideration⁴¹ which were, however, denied in the Resolution⁴² dated June 18, 2010, hence, the instant petitions.

The Issues Before the Court

In **G.R. No. 192861**, petitioner Linda Rana (Linda Rana)⁴³ faults the RTC in (a) not finding Wong and Sps. Uy guilty of malice and bad faith both in instituting Civil Case No. CEB-20893 and in erroneously implementing the November 27, 1997 Order, and (b) failing or refusing to grant the reliefs initially prayed for, among others, the reconveyance of the encroached property.⁴⁴

On the other hand, in **G.R. No. 192862**, petitioners Wong, *et al.* fault the RTC in (a) applying the *in pari delicto* doctrine against them and failing to abate the nuisance⁴⁵ which still continues and actually exists as Sps. Rana caused the same to be reconstructed and restored to their prejudice,⁴⁶ and (b) not finding Sps. Rana guilty of bad faith in instituting Civil Case No. CEB-21296 and ordering them to pay damages to petitioners Wong, *et al.*⁴⁷

The Court's Ruling

The petitions are partly meritorious.

As both petitions traverse the issues intersectingly, the Court deems it apt to proceed with its disquisition according to the subject matters of the cases as originally filed before the RTC.

³⁹ *Rollo* (G.R. No. 192861), p. 85; *rollo* (G.R. No. 192862), p. 50.

⁴⁰ *Rollo* (G.R. No. 192861), pp. 88-89; *rollo* (G.R. No. 192862), pp. 53-54.

⁴¹ See Separate Motions filed by Sps. Rana and Wong, Sps. Ong and Sps. Uy; *rollo* (G.R. No. 192861), pp. 92-100 and *rollo* (G.R. No. 192862), pp. 61-79, respectively.

⁴² *Rollo* (G.R. No. 192861), pp. 102-105; *rollo* (G.R. No. 192862), pp. 57-60.

⁴³ During the pendency of the proceedings before the RTC, Linda Rana's husband, Reynaldo Rana, passed away, thus, the petition in G.R. No. 192861 was instituted by her solely. (See Notice of Death; records, pp. 247-249.)

⁴⁴ *Rollo* (G.R. No. 192861), pp. 14-15.

⁴⁵ *Rollo* (G.R. No. 192862), p. 17.

⁴⁶ *Id.* at 22.

⁴⁷ *Id.* at 27-28.

**A. Civil Case No. CEB-20893
For Abatement of Nuisance and Damages.**

Under Article 694 of the Civil Code, a nuisance is defined as “any act, omission, establishment, business, condition of property, or anything else which: (1) Injures or endangers the health or safety of others; or (2) Annoys or offends the senses; or (3) Shocks, defies or disregards decency or morality; or (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) Hinders or impairs the use of property.” Based on case law, however, the term “nuisance” is deemed to be “so comprehensive that it has been applied to almost all ways which have interfered with the rights of the citizens, either in person, property, the enjoyment of his property, or his comfort.”⁴⁸

Article 695 of the Civil Code classifies nuisances with respect to the object or objects that they affect. In this regard, a nuisance may either be: (a) a public nuisance (or one which “affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal”); or (b) a private nuisance (or one “that is not included in the foregoing definition” [or, as case law puts it, one which “violates only private rights and produces damages to but one or a few persons”]).⁴⁹

Jurisprudence further classifies nuisances in relation to their legal susceptibility to summary abatement (that is, corrective action without prior judicial permission). In this regard, a nuisance may either be: (a) a nuisance *per se* (or one which “affects the immediate safety of persons and property and may be summarily abated under the undefined law of necessity”);⁵⁰ or (b) a nuisance *per accidens* (or that which “depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance.”)⁵¹

It is a standing jurisprudential rule that unless a nuisance is a nuisance *per se*, it may not be summarily abated. In *Lucena Grand Central Terminal, Inc. v. Jac Liner, Inc.*,⁵² the Court, citing other cases on the matter, emphasized the need for judicial intervention when the nuisance is not a nuisance *per se*, to wit:

In *Estate of Gregoria Francisco v. Court of Appeals*, this Court held:

Respondents can not seek cover under the general welfare clause authorizing the abatement of nuisances without judicial proceedings. That tenet applies to a **nuisance *per se***, or one which **affects the immediate**

⁴⁸ *AC Enterprises, Inc. v. Frabelle Properties Corp.*, 537 Phil. 114, 143 (2006).

⁴⁹ *Id.*

⁵⁰ *Perez v. Madrona*, G.R. No. 184478, March 21, 2012, 668 SCRA 696, 706-707.

⁵¹ *Salao v. Santos*, 67 Phil. 547, 550-551 (1939).

⁵² 492 Phil 314 (2005).

safety of persons and property and may be summarily abated under the undefined law of necessity. The storage of copra in the quonset building is a legitimate business. By its nature, it can not be said to be **injurious to rights of property, of health or of comfort of the community.** If it be a *nuisance per accidens* it may be so proven in a hearing conducted for that purpose. It is not *per se* a nuisance warranting its summary abatement without **judicial intervention.**

In *Pampanga Bus Co., Inc. v. Municipality of Tarlac* where the appellant-municipality similarly argued that the terminal involved therein is a nuisance that may be abated by the Municipal Council *via* an ordinance, this Court held: “Suffice it to say that **in the abatement of nuisances the provisions of the Civil Code (Articles 694-707) must be observed and followed.** This appellant failed to do.”⁵³ (Emphases supplied; citations omitted)

Aside from the remedy of summary abatement which should be taken under the parameters stated in Articles 704⁵⁴ (for public nuisances) and 706⁵⁵ (for private nuisances) of the Civil Code, a private person whose property right was invaded or unreasonably interfered with by the act, omission, establishment, business or condition of the property of another may file a civil action to recover personal damages.⁵⁶ Abatement may be judicially sought through a civil action therefor⁵⁷ if the pertinent requirements under the Civil Code for summary abatement, or the requisite that the nuisance is a nuisance *per se*, do not concur. To note, the remedies of abatement and damages are cumulative; hence, both may be demanded.⁵⁸

In the present cases, Wong, *et al.* availed of the remedy of judicial abatement and damages against Sps. Rana, claiming that both the **elevated and cemented subject portion** and the **subject backfilling** are “nuisances” caused/created by the latter which curtailed their use and enjoyment of their properties.

⁵³ Id. at 327.

⁵⁴ ART. 704. Any private person may **abate a public nuisance which is specially injurious to him** by removing or, if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:

- (1) That demand be first made upon the owner or possessor of the property to abate the nuisance;
- (2) That such demand has been rejected;
- (3) That the abatement be approved by the district health officer and executed with the assistance of the local police; and
- (4) That the value of the destruction does not exceed three thousand pesos. (Emphasis supplied)

⁵⁵ ART. 706. Any person injured by a **private nuisance may abate** it by removing or, if necessary, by destroying the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury. However, it is **indispensable that the procedure for extrajudicial abatement of a public nuisance by private person be followed.** (Emphases supplied)

⁵⁶ See *AC Enterprises, Inc. v. Frabelle Properties Corp.*, supra note 48, at 144-145.

⁵⁷ Articles 699 and 705 of the Civil Code provide as follows:

ART. 699. The remedies against a public nuisance are:

- (1) A prosecution under the Penal Code or any local ordinance; or
- (2) **A civil action;** or
- (3) Abatement, without judicial proceedings.

ART. 705. The remedies against a private nuisance are:

- (1) **A civil action;** or
- (2) Abatement, without judicial proceedings. (Emphases supplied)

⁵⁸ See Article 697 of the Civil Code. See also Paras, Edgardo L., *Civil Code of the Philippines Annotated* (16th Ed., 2008), Vol. 2, p. 747.

With respect to the **elevated and cemented subject portion**, the Court finds that the same is not a nuisance *per se*. By its nature, it is not injurious to the health or comfort of the community. It was built primarily to facilitate the ingress and egress of Sps. Rana from their house which was admittedly located on a higher elevation than the subject road and the adjoining Uy and Wong-Ong properties. Since the subject portion is not a nuisance *per se* (but actually a nuisance *per accidens* as will be later discussed) it cannot be summarily abated. As such, Wong, *et al.*'s demolition of Sps. Rana's subject portion, which was not sanctioned under the RTC's November 27, 1997 Order, remains unwarranted. Resultantly, damages ought to be awarded in favor of Sps. Rana particularly that of (a) **nominal damages**⁵⁹ – for the vindication and recognition of Sps. Rana's right to be heard before the court prior to Wong, *et al.*'s abatement of the subject portion (erroneously perceived as a nuisance *per se*) – and (b) **temperate damages**⁶⁰ – for the pecuniary loss owing to the demolition of the subject portion, which had been established albeit uncertain as to the actual amount of loss.

Sps. Rana's entitlement to the above-mentioned damages, however, only stands in theory. This is because the actual award thereof is precluded by the damage they themselves have caused Wong, *et al.* in view of their construction of the subject portion. As the records establish, Sps. Rana, without prior consultation with Wong, *et al.* and to their sole advantage, elevated and cemented almost half⁶¹ of the 10-meter wide subject road. As homeowners of Peace Valley Subdivision, Wong, *et al.* maintain the rights to the unobstructed use of and free passage over the subject road. By constructing the subject portion, Sps. Rana **introduced a nuisance *per accidens* that particularly transgressed the aforesaid rights**. Thus, for the vindication and recognition of Wong, *et al.*'s rights, Sps. Rana should be similarly held liable for **nominal damages**. Under Article 2216 of the Civil Code,⁶² courts have the discretion to determine awards of nominal and temperate damages **without actual proof of pecuniary loss**, as in this case. Assessing the respective infractions of the parties herein, the Court finds it prudent to sustain the CA's verdict offsetting the damage caused by said parties against each other. The Court can, however, only concur with the CA in result since the latter inaccurately applied,⁶³ as basis for its ruling, the *in pari delicto* principle enunciated in the case of *Yu Bun Guan v. Ong*⁶⁴ (*Yu Guan*). In said case, the Court discussed the *in pari delicto* principle with respect to the subject matter of inexistent and void contracts, *viz.*:

⁵⁹ Civil Code, ART. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

⁶⁰ Civil Code ART. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be provided with certainty.

⁶¹ *Rollo* (G.R. No. 192861), p. 50.

⁶² ART. 2216. No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case.

⁶³ See pages 13 and 14, as well as footnote 5 of CA Decision, *rollo* (G.R. No. 192861), pp. 84-85.

⁶⁴ 419 Phil. 845 (2001).

Inapplicability of the *in Pari Delicto* Principle

The principle of *in pari delicto* provides that when two parties are equally at fault, the law leaves them as they are and denies recovery by either one of them. However, this principle does not apply with respect to inexistent and void contracts. Said this Court in *Modina v. Court of Appeals*:

“The principle of *in pari delicto non oritur actio* denies all recovery to the guilty parties *inter se*. It applies to cases where the nullity arises from the illegality of the consideration or the purpose of the contract. When two persons are equally at fault, the law does not relieve them. The exception to this general rule is when the principle is invoked with respect to inexistent contracts.”⁶⁵ (emphasis supplied; citations omitted)

Clearly, no void or inexistent contract is herein at issue, hence, the Court’s disagreement with the CA’s invocation of *Yu Guan* in this respect.

As for the **subject backfilling** touching the perimeter fence of the Uy property, records show that the said fence was not designed to act as a retaining wall⁶⁶ but merely to withhold windload and its own load.⁶⁷ Both the RTC and the CA found the subject backfilling to have added pressure on the fence,⁶⁸ consequently endangering the safety of the occupants of the Uy property, especially considering the higher elevation of the Rana property. With these findings, the Court thus agrees with the courts *a quo* that there is a need for Linda Rana to construct a retaining wall⁶⁹ which would bear the weight and pressure of the filling materials introduced on their property. The Court, however, observed that neither the RTC nor the CA specified in their respective decisions the backfilled areas which would require the retaining wall. Due to the technicality of the matter, and considering that the due authenticity and genuineness of the findings/recommendation⁷⁰ of the OBO and the accompanying sketch⁷¹ thereto were not specifically denied by Sps. Rana,⁷² the required retaining wall shall be constructed in accordance with the said sketch which showed the area backfilled.

⁶⁵ Id. at 856.

⁶⁶ See Annex “A” of Presidential Decree No. (PD) 1096 (1977), entitled “ADOPTING A NATIONAL BUILDING CODE OF THE PHILIPPINES (NBCP) THEREBY REVISING REPUBLIC ACT NUMBERED SIXTY-FIVE HUNDRED FORTY-ONE (R.A. NO. 6541),” on “Words, Terms and Phrases” which defines “retaining wall” as “[a]ny wall used to resist the lateral displacement of any material; a subsurface wall built to resist the lateral pressure of internal loads.

⁶⁷ Transcript of Stenographic Notes, June 1, 1999, pp. 7, 11.

⁶⁸ *Rollo*, (G.R. No. 192861), pp. 69 and 80; *rollo* (G.R. No. 192862), p. 135.

⁶⁹ Under Section 1202(c)(2) of PD 1096, amending R.A. No. 6541, otherwise known as the “National Building Code of the Philippines.”

SEC. 1202. Excavation, Foundation and Retaining Walls.

x x x x

(c) Footings, Foundations and Retaining Walls

x x x x

(2) Whenever or wherever there exists in the site of the construction an abrupt change in the ground levels or level of the foundation such that instability of the soil could result, retaining walls shall be provided and such shall be of adequate design and type of construction as prescribed by the Secretary [of the then Public Works, Transportation and Communications].

⁷⁰ Records, p. 205. Issued by Engineering Assistant Cresercia F. Alcuizar dated June 2, 1997.

⁷¹ Id. at 206.

⁷² See paragraph 9 of the Complaint in Civil Case No. CEB-20893; id. at 4. See also paragraphs 7 and 8 of the answer; id. at 19-20.

**B. Civil Case No. CEB-21296
For Recovery of Property.**

Now, with respect to Civil Case No. CEB-21296, the Court finds that the CA erred in affirming the RTC's dismissal thereof considering that it was determined that Sps. Uy had actually encroached upon the Rana property to the extent of 2 sq. m.

Settled is the rule that in order that an action for the recovery of property may prosper, the party prosecuting the same need only prove the identity of the thing and his ownership thereof.⁷³ In the present cases, the report⁷⁴ of the court-appointed commissioner, Atty. Pintor, who conducted a relocation survey⁷⁵ of the Rana and Uy properties identified and delineated the boundaries of the two properties and showed that Sps. Uy's perimeter fence intruded on **2 sq. m.** of the Rana property.⁷⁶ Both the RTC and the CA relied upon the said report; thus, absent any competent showing that the said finding was erroneous, the Court sees no reason to deviate from the conclusions reached by the courts *a quo*. Having sufficiently proven their claim, Sps. Rana are, therefore entitled to the **return of the 2 sq.m. encroached portion**. Corollary thereto, compliance by Linda Rana with the directive in Civil Case No. CEB-20893 to build a retaining wall on their property shall be held in abeyance pending return of the encroached portion.

C. Claims Common to Both Civil Case No. CEB-20893 and Civil Case No. CEB-21296: Malicious Prosecution of Both Cases, Moral and Exemplary Damages, Attorney's Fees, and Litigation Expenses.

As a final matter, the Court resolves the claims common to both Civil Case No. CEB-20893 and Civil Case No. CEB-21296, particularly those on malicious prosecution, as well as moral and exemplary damages, attorney's fees, and litigation expenses.

As the Court sees it, the filing by the parties of their respective complaints against each other was not clearly and convincingly shown to have been precipitated by any malice or bad faith, sufficient enough to warrant the payment of damages in favor of either party. As correctly pointed out by the CA, malicious prosecution, both in criminal and civil

⁷³ See Articles 428 and 434 of the Civil Code which respectively read:

ART. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

ART. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

⁷⁴ See Commissioner's Report dated November 22, 2000; records, pp. 304-306.

⁷⁵ Id. at 311.

⁷⁶ Id. at 304-306.

cases, requires the presence of two (2) elements, namely: (a) malice; and (b) absence of probable cause. Moreover, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person; and that it was initiated deliberately knowing that the charge was false and baseless.⁷⁷ Hence, the mere filing of a suit which subsequently turns out to be unsuccessful does not render a person liable for malicious prosecution, for the law could not have meant to impose a penalty on the right to litigate.⁷⁸ As the aforementioned elements were not duly proven, the claims for malicious prosecution are hereby denied.

With respect to the claims for moral damages, although the Court found the parties to have sustained nominal damages as a result of the other parties' acts, an award of moral damages would nonetheless be improper in this case. Article 2217 of the Civil Code states that "[m]oral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission." Corollary thereto, Article 2219 of the same code (Article 2219) states that "[m]oral damages may be recovered in the following and analogous cases: (1) A criminal offense resulting in physical injuries; (2) Quasi-delicts causing physical injuries; (3) Seduction, abduction, rape, or other lascivious acts; (4) Adultery or concubinage; (5) Illegal or arbitrary detention or arrest; (6) Illegal search; (7) Libel, slander or any other form of defamation; (8) Malicious prosecution; (9) Acts mentioned in Article 309; [and] (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35."

Here, it was not proven that the damage caused by (a) Sps. Rana against Wong, *et al.*, arising from the elevation and cementing of the subject portion and the subject backfilling, and (b) Sps. Uy against Sps. Rana, by virtue of their 2 sq. m. encroachment, could be characterized as a form of or had resulted in physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, or any other similar injury. Neither was it convincingly shown that the present controversies fall within the class of cases enumerated under Article 2219. Therefore, no moral damages should be awarded.

Similarly, the Court deems that an award of exemplary damages would be inappropriate since these damages are imposed only "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."⁷⁹ Bluntly placed, the Court does not view the present matters of such caliber. Hence, there is no reason to grant the parties' claims for the same.

⁷⁷ *Rollo* (G.R. No. 192861), p. 88; *rollo* (G.R. No. 192862), p. 53.

⁷⁸ *Premiere Dev't. Bank v. Central Surety & Insurance Co., Inc.*, 598 Phil. 827, 861 (2009); citation omitted.

⁷⁹ CIVIL CODE, Art. 2229.

Lastly, considering that neither of the parties was able to successfully prove (a) their claims for malicious prosecution,⁸⁰ (b) their entitlement to moral and exemplary damages,⁸¹ and (c) the attendance of any of the circumstances under Article 2208⁸² of the Civil Code, their respective claims for attorney's fees and litigation expenses against each other are also denied.

WHEREFORE, the Decision dated July 13, 2005 and the Resolution dated June 18, 2010 in CA-G.R. CV No. 78463 are **SET ASIDE** and a new one is entered as follows:

In Civil Case No. CEB-20893:

(a) The awards of damages in favor of each party are **OFFSET** against each other as herein discussed;

(b) Linda Rana is hereby **ORDERED** to build, at her own expense, a retaining wall on the property covered by TCT No. 124095 in accordance with the sketch of the Office of the Building Official of Cebu City attached to the records of the case, subject to the condition as shall be hereunder set; and

(c) All other claims and counterclaims are **DISMISSED** for lack of legal and factual bases.

In Civil Case No. CEB-21296:

(a) Spouses Rosario and Wilson Uy are **DIRECTED** to return to Linda Rana the 2-square meter encroached portion as reflected in the relocation survey conducted by court-appointed commissioner Atty. Reuel T. Pintor, after which Linda Rana shall be **OBLIGED** to build the retaining wall as directed by the Court; and

⁸⁰ See *Premiere Dev't. Bank v. Central Surety & Insurance Co., Inc.*, supra note 78.

⁸¹ See *Equitable PCI Bank v. Ng Sheung Ngor*, 565 Phil. 520, 543 (2007).

⁸² ART. 2208. In the absence of stipulation, **attorney's fees and expenses of litigation**, other than judicial costs, cannot be recovered, except:

(1) **When exemplary damages are awarded;**

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) **In case of a clearly unfounded civil action or proceeding against the plaintiff;**

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded; or

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable. (Emphases supplied)

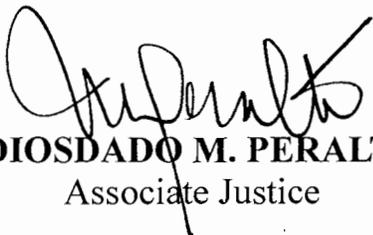
(b) All other claims and counterclaims are **DISMISSED** for lack of merit.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ARTURO D. BRION
Associate Justice
Acting Chairperson


DIOSDADO M. PERALTA
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


ARTURO D. BRION
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**

Chief Justice