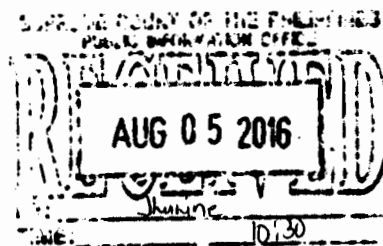




Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION



**SPOUSES BERNABE
 MERCADER, JR. and LORNA
 JURADO-MERCADER,
 OLIVER MERCADER,
 GERALDINE MERCADER and
 ESRAMAY MERCADER,**
 Petitioners,

- versus -

G.R. No. 163157

Present:

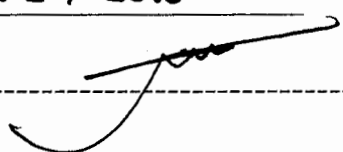
SERENO, C.J.,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PERLAS-BERNABE, and
 CAGUIOA, J.J.

Promulgated:

JUN 27 2016

**SPOUSES JESUS BARDILAS and
 LETECIA GABUYA BARDILAS,**
 Respondents.

x-----x



DECISION

BERSAMIN, J.:

The owner of the servient estate retains ownership of the portion on which the easement is established, and may use the same in such manner as not to affect the exercise of the easement.¹

The Case

This appeal seeks to undo and reverse the decision promulgated on March 18, 2003 “only insofar as Civil Case No. CEB-12783 is concerned,” whereby the Court of Appeals (CA) partly affirmed the judgment rendered on October 10, 1995 by the Regional Trial Court (RTC) in Civil Case No. CEB-12783 and Civil Case No. CEB-13384. In so doing, the CA recognized the right of the respondents as the owners of the servient estate to the road right of way.

¹ Article 630, *Civil Code*.

Antecedents

The issue concerns the right of way between the owners of three parcels of land denominated as Lot No. 5808-F-1, Lot No. 5808-F-2-A and Lot 5808-F-2-B. The lots were portions of Lot No. 5808-F, situated in Barangay Punta Princesa in Cebu City with an area of 2,530 square meters, and registered under Transfer Certificate of Title No. 78424 of the Registry of Deeds in Cebu City in the name of "Arsenia Fernandez, of legal age, married to Simeon Cortes, both Filipinos."² Another subdivision lot derived from Lot No. 5808-F was Lot No. 5808-F-3

Lot No. 5808-F-1, which fronted a side street within the Clarita Village, contained 289 square meters, and was registered under TCT No. 88156 in the names "OLIVER, 14 yrs. old, GERALDINE, 12 yrs. old, ESRAMAY, 10 yrs. old, all surnamed MERCADER, Filipino, minors, and single."³ Such registered owners were the children of petitioner Bernabe Mercader, Jr. by his first wife, Rebecca Gabuya Mercader, who had died in 1975.

Lot No. 5808-F-2-A, situated behind Lot No. 5808-F-1, had an area of 89 square meters. It was covered by TCT No. 107914 in the names of "spouses BERNABE MERCADER AND LORNA JURADO, of legal age, Filipinos,"⁴ and was particularly described as follows:

A parcel of land (Lot 5808-F-2-A, Psd-07-018600, being a portion of Lot 5808-F-2, Psd-07-01-004579). Situated in the Barrio of Punta Princesa, City of Cebu, Province of Cebu, Island of Cebu. Bounded on the North and East along lines 1-2-3 by Lot 5808-F-2-B, **with existing Right of Way (3.00 meters wide)**; of the subdivision plan; on the South along line 3-4 by Lot 5726, Cebu Cadastre; and on the West, along line 4-1 by Lot 5808-F-1, Psd-07-01-004579. Beginning at a point marked "1" on plan being S. 50 deg. 59'W., 411.55 m. from BM No. 44, Cebu Cadastre; thence N. 60 deg. 34' E., 4.99 m. to point 2; thence S. 20 deg. 33' E., 17.95 m. to point 3; thence S. 60 deg. 34' W., 4.99 m. to point 4; thence N. 20 deg. 33' W., 17.94 m. to point of beginning; containing an area of EIGHTY NINE (89) SQUARE METERS, more or less. x x x (Emphasis Supplied)

Lot No. 5808-F-2-B, situated behind Lot No. 5808-F-2-A, contained 249 square meters, and was covered by TCT No. 107915 in the names of "spouses LETECIA GABUYA BARDILAS and JESUS BARDILAS, of legal age, Filipinos."⁵ It was particularly described as follows:

² Records, Civil Case No. CEB-13384, p. 33.

³ Records, Civil Case No. CEB-12783, p. 59.

⁴ Id. at 61.

⁵ Id. at 63.

A parcel of land (Lot 5808-F-2-B, Psd-07-018600, being a portion of Lot 5808-F-2, Psd-07-01-004579). Situated in the Barrio of Punta Princesa, City of Cebu, Province of Cebu, Island of Cebu. Bounded on the SW., along line 1-2 by Lot 5808-F-1, Psd-07-01-004579; on the West along line 2-3 by Lot 5726, Cebu Cad.; on the North along line 3-4-5 by Lot 5725, Cebu Cadastre; on the East, along line 5-6 by Lot 5808-F-3, Psd-07-01-004579; on the South along line 6-7 by Lot 5726, Cebu Cad. and on the West, along line 7-8-1 by Lot 5808-F-2-A of the subdivision plan; **with a Road Right of Way (3.00 meters wide)**. Beginning at a point marked "1" on plan being S. 50 deg., 59'W., 411.55 m. from BM No. 44, Cebu Cadastre; thence S. 64 deg., 87'W., 16.02 m. to point 2; thence N. 22 deg. 23'W., 3.01 m. to point 3; thence N. 64 deg. 10'E., 16.12 m. to point 4; thence N. 64 deg. 10'E., 14.00 m. to point 5; thence S. 21 deg. 20'E., 20.01 m. to point 6; thence S. 60 deg. 34' W., 9.40 m. to point 7; thence N. 20 deg. 33'W., 17.95 m. to point 8; thence S. 60 deg. 34'W., 4.99 m. to the point of the beginning. Containing an area of TWO HUNDRED FORTY NINE (249) SQUARE METERS, more or less. x x x (Emphasis supplied)

The right of way mentioned in the TCT No. 107915 of the Spouses Bardilas (Lot No. 5808-F-2-B) exited into the Clarita Subdivision and was roughly 300 lineal meters from Buhisan Road, a national road.

Behind Lot No. 5808-F-2-B was Lot No. 5808-F-3, registered under TCT No. 88158 in the name of "LETECIA GABUYA BARDILAS, married to JESUS BARDILAS, both of legal age and Filipinos,"⁶ particularly described as follows:

A parcel of land (Lot 5808-F-3, Psd-07-07-004579, bearing a portion of 5808-F, psd-07-07-003019); situated in the District of Punta Princesa, Ciky (sic) of Cebu, Island of Cebu. Bounded on the Ne. and NW. along lines 1-2-3- by lot 5808-F-4; on the NW., along line 3-4 by lot 5808-F-5; along line 4-5 by lot 5808-F-6, all of the subdivision plan; on the NW., along line 5-6 by Lot 5725, Cebu Cadastre; on the East and SE., along lines 7-8-9 by lot 5808-B; on the SE., along line 9-1 by lot 5808-C; along 10-11-12 by lot (sic) 5808-D; along line 12-13-14 by Lot 5808-E., all psd-0701003019; on the SE., along line 14-45 by lot 5726, Cebu Cadastre; on the SW., along line 15-16 by Lot 5808-F-2 of the subdivision plan; and on the NW, along line 16-1 by lot 5725, Cebu Cadastre. x x x

In relation to Lot No. 5808-F-3, there is another right of way about 40 lineal meters away from Buhisan Road.⁷

On May 11, 1992, the Clarita Village Association erected a concrete perimeter fence to close the exit point of the right of way of the Spouses Bardilas from Lot No. 5808-F-2-B to the existing road within Clarita

⁶ Records, Civil Case No. CEB-13384, p. 35.

⁷ Rollo, p. 29.

Village. The closure forced the Spouses Bardilas to use the second exit to Buhisan Road, which is from their Lot No. 5808-F-3.

At the instance of the Clarita Village Association, and the Spouses Bardilas, Engr. Edgar T. Batiquin of the Office of the Building Official of Cebu City, conducted his verification/investigation of the vicinity of the disputed right of way. Engr. Batiquin later on reported to the Building Official the following findings in his letter dated June 15, 1992,⁸ to wit:

Per verification/investigation conducted in connection with the above subject the findings are to wit:

1. That the fence constructed by the association should have the necessary permit;
2. Said fence encroached a small portion of the road right-of-way of Ms. Bardilas (please see attached sketch plan, color red);
3. That a fence and portion of the residential house owned by Mr. Bernabe Mercader have also encroached the road right-of-way (please see attached sketch plan, color green);
4. Total area encroached on the right-of-way is 14.00 square meters.

Subsequently, on July 1, 1992, Barangay Chairman Jose F. Navarro of Punta Princesa, Cebu City convened a meeting among the interested parties at the Chinese Temple inside the Clarita Village. In attendance were officers of the Clarita Village Association, including petitioner Bernabe Mercader, Jr., and barangay officials. The Clarita Village Association explained that its closure of the right of way had been for the purpose of preventing individuals of "questionable character" from using the right of way to enter the area to steal from the residents of the Clarita Village. The meeting resulted in the discussion and agreement of the following matters, to wit:⁹

- 1) The villagers/Clarita Village Association WILL HAVE NO OBJECTION for the spouses: Jesus and Letecia Bardilas (on their own expense) (sic) demolish a portion of the wall fence erected on a portion of Clarita Village side street blocking the said spouses' right of way; - and replace with IRON GATE so that they can use it anytime. Buying cost of the iron gate – as well as labor cost in replacing the knocked out portion of the said wall fence with iron gate will be shouldered by spouses: Jesus and Letecia Bardilas.
- 2) KEYS TO THE IRON GATE. - One (1) key will be given to the spouses MR. & MRS. BERNABE MERCADER so that at anytime they can open the gate in going thru their residence. ONE (1) key will

⁸ Records, Civil Case No. CEB-12783, p. 39.

⁹ Rollo, p. 86.

be kept by spouses: Jesus and Letecia Bardilas for their usage in opening the iron gate anytime they may open it.

- 3) All parties present were in accord that the contents of items 1 to 3 STAND as their agreement in solving this instant case, and also in accord to implement the agreement as soon as possible. THEY ALSO AGREE THAT IN VIEW OF THIS AGREEMENT, - THEY ALL CONSIDER THIS CASE AMICABLY SETTLED.

By letter dated August 14, 1992,¹⁰ the Spouses Bardilas, through Atty. Alfredo J. Sipalay, informed the Spouses Mercader of the encroachment by about 14 square meters of the latter's residential house and fence on the right of way. Hence, they wrote that they were giving the latter two alternatives, namely:

1. Pay THIRTY THOUSAND PESOS (₱30,000.00) for the 14 square meters which your house and wall fence have encroached (the amount represents ₱2,000.00 per square meter, which is the fair market value of the property plus ₱2,000.00 for the expenses the Spouses Bardilas have incurred as a result of the encroachment of your property); or
2. Demolish the wall fence and the portion of your house which encroached my clients' property.

On August 19, 1992, the Spouses Mercader, through Atty. Rolindo A. Navarro, responded by insisting that as the owners of Lot No. 5808-F-2-A they were equally entitled to the right of way; and that they were proposing to buy the equivalent portion of the right of way to which they were entitled at a reasonable price, *viz.*:¹¹

Dear Compañero:

Your letter dated August 14, 1992 addressed to Mr. Bernabe Mercader has been referred to me for appropriate response.

In this connection, please be informed that my said client is equally entitled to the use of the road-right-of-way subject of your letter having bought Lot No. 5808-F-2-A which is one of the two dominant estates entitled thereto. The other estate is Lot No. 5808-F-2-B owned by your clients. Incidentally, this road-right-of-way has not been used for its purpose as the exit to Clarita Village has been closed. Attached herewith is copy of TCT No. 107914 for Lot No. 5808-F-2-A as Annex "A".

However, if your client is willing, my client proposes to buy the equivalent portion of the road-right-of-way to which they are entitled to at a reasonable price.

Please feel free to communicate with me on this matter.

¹⁰ Records, Civil Case No. CEB-12783, p. 65.

¹¹ Id. at 66.

In their reply of August 24, 1992,¹² the Spouses Bardilas rejected the claim of the Spouses Mercader that they were entitled to the use of the right of way, and reiterated their demand for ₱30,000.00 as the fair market value of the property, stating:

Dear Atty. Navarro:

This is in reply to your letter dated August 19, 1992 which our office received on August 20, 1992.

My clients, Spouses Jesus and Letecia Bardilas, disagree with Mr. Bernabe Mercader's claim that he is entitled to the use of their road right of way. Attached as Annex "A" is a photocopy of my clients' TCT No. 107915 of the property in question which clearly states that my clients' property is subject to three (3) meters wide right of way. Mr. Mercader's TCT No 107914, which was issued on the same day and time as my clients' TCT on March 30, 1989 at 10:10 a.m., don't (sic) have the same provision regarding the use of a right of way. This is because Mr. Mercader's property is fronting the street while my clients' property is situated at the back of Mr. Mercader's property; hence, the provision regarding the right of way on my clients' TCT.

It is true that my clients' road right of way has been closed since June, 1992 due to a wall constructed by the Clarita Village Association resulting in much inconvenience to my clients since they have to pass through a circuitous and muddy road. However, in a meeting with their Barangay Captain, the officers of the Clarita Village Association already agreed to let my clients pass through the wall provided they will put up a gate between the walls. My clients already have a three (3) meter wide gate ready to be put up only to discover that it won't fit because Mr. Mercader has encroached their road right of way. Hence, my letter to Mr. Mercader on August 14, 1992, informing him to pay ₱30,000.00 to my clients or to demolished (sic) his wall fence and portions of his house which encroached my clients' road right of way.

Since Mr. Mercader opts to pay my clients, we reiterate our demand for ₱30,000.00 which is the fair market value of my clients' property.

We hope we could settle this matter within this week.

Civil Case No. CEB-12783

Finding the demand for payment of ₱30,000.00 by the Spouses Bardilas to be unlawful, unwarranted and unfounded, the Spouses Mercader commenced on September 8, 1992 their action for declaratory relief, injunction and damages against the Spouses Bardilas in the RTC in Cebu City (Civil Case No. CEB-12783). The case was assigned to Branch 20.

¹² Id. at 67.

The Spouses Mercader alleged that they were the lawful and registered owners of adjoining lots, to wit: Lot No. 5808-F-1 and Lot No. 5808-F-2-A where their residential house stood;¹³ and that their Lot No. 5808-F-2-A and the Spouses Bardilas' Lot No. 5805-F-2-B were portions of Lot No. 5808-F-2 that had been subdivided and sold separately to each of them;¹⁴ that Lot No. 5808-F-2-A was bounded on the North and the East by Lot No. 5808-F-2-B; that in 1989, they had used a negligible portion of the easement to build their fence and a portion of their residential house, without impairing the use for which it was established and without any objection, protest or complaint from the respondents; that they retained the ownership of the portion of the property on which the easement was established pursuant to Article 630 of the *Civil Code*; that the non-user of the easement had extinguished it pursuant to Article 631, paragraph 3, of the *Civil Code*; that the rights of the dominant and servient estates had merged in them; and that there was a need to declare their rights to that portion of their property on which the easement of right of way had been established vis-a-vis the unlawful demands of the Spouses Bardilas.

The Spouses Mercader prayed that they be declared as having retained the ownership of the 63.33 square meters where the easement of right of way had been established; that the merger of the rights of the servient estate owner and dominant estate owner be declared their favor;¹⁵ and that the Spouses Bardilas be made to pay damages.

In their answer,¹⁶ the Spouses Bardilas averred that Lot No. 5808-F-2-A and Lot No. 5808-F-2-B used to be parts of Lot No. 5808-F-2; that the right of way in question was a part of Lot No. 5808-F-2-B that they owned as borne out by the technical descriptions of Lot No. 5808-F-2-A¹⁷ and Lot No. 5808-F-2-B¹⁸ as well as the subdivision plan of the properties;¹⁹ that they learned of the encroachment on the portion of their property being used as right of way only from the survey conducted by Engr. Batiquin of the Office of the Building Official in June 1992;²⁰ and that they then referred the matter to their lawyer for appropriate action.

The Spouses Bardilas stated as affirmative defense that although the property of the Spouses Mercaders had a gate fronting the side street within the Clarita Village, they had allowed the latter to use the right of way only because Bernabe Mercader, Jr. was the husband of the elder sister of Letecia

¹³ Id. at 1.

¹⁴ Id. at 2.

¹⁵ Id. at 4.

¹⁶ Id. at 22-34.

¹⁷ Id. at 37.

¹⁸ Id. at 36.

¹⁹ Id. at 68.

²⁰ Id. at 24.

Gabuya Bardilas; that the Spouses Mercader abused the favor by using the right of way as their garage; that they requested the Spouses Mercader to move their vehicles out but they got angry and instigated the closure of the right of way by the Clarita Village Association, where he was a ranking officer at the start of the dispute; that the Spouses Mercader were wrongly claiming the extinguishment of the right of way; and that the Spouses Mercader had no cause of action against them, and should be held liable for damages in their favor.

During the pre-trial on September 29, 1993, the trial court required the Spouses Mercader to amend their petition to include the children of Bernabe Mercader, Jr. by his first wife, Rebecca Gabuya Mercader, due to their being the registered owners of Lot No. 5808-F-1. The amended petition, dated October 25, 1993, was filed on November 4, 1993.²¹

Civil Case No. CEB-13384

In view of the encroachment by the Spouses Mercader on a portion of the road right of way, the Spouses Bardilas could not fit their 3-meter wide iron gate. Another meeting with the officers of the Clarita Village Association was held on November 11, 1992.²² When the efforts of the parties to amicably settle the issue failed, the Spouses Bardilas brought on December 24, 1992 their own suit for specific performance with preliminary prohibitory or mandatory injunction against the Clarita Village Association and the Spouses Mercader (Civil Case No. CEB-13384) in the RTC in Cebu City. The case was raffled to Branch 10 of the RTC.

On October 5, 1993, the Spouses Bardilas moved for the consolidation of Civil Case No. CEB-13384 with Civil Case No. CEB-12783. The RTC (Branch 10) granted the motion for consolidation.²³

Judgment of the RTC

On October 10, 1995, the RTC rendered its consolidated decision in Civil Case No. CEB 12783 and Civil Case No. CEB-13384, disposing:²⁴

WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered in favor of petitioner Mercader's (sic) as against spouses Bardilas in **Civil Case No. 12783**:

²¹ Id. at 81.

²² Records, Civil Case No. CEB-13384, p. 18.

²³ Id. at 49.

²⁴ Records, Civil Case No. CEB-12783, pp. 190-191.

- (a) **DECLARING** the **EXTINGUISHMENT** of the easement of road right of way passing through the real properties of petitioners spouses Mercader's (sic) and Bernabe Mercader, Jr. and his children and the cancellation of the annotation of said easement from TCT No. 107914 and TCT No. 88156;
- (b) **DECLARING** petitioner Mercader's (sic) as owners of said extinguished easement of right of way;
- (c) **GRANTING** to petitioner Mercader's (sic) the right to use and occupy the extinguished easement which adjoins the Mercader's properties;
- (d) **ORDERING** respondents spouses, Jesus and Letecia Bardilas to pay petitioners the following amounts:
 - a) The sum of ₱100,000.00 as moral damages;
 - b) The sum of ₱35,000.00 as attorney's fees; and
 - c) The sum of ₱20,000.00 as costs of suit;

and in **Civil Case No. 13384**:

- (a) **DISMISSING** the amended complaint filed by plaintiffs spouses Bardilas;
- (b) **DECLARING** the road network of the Clarita Village still as private properties and not public;
- (c) **DECLARING** that the closure of OUTLET NO. 1 of said easement of right of way by the Clarita Village as lawful and valid;

SO ORDERED.

On October 19, 1995, the Spouses Bardilas moved for a new trial on the ground of newly discovered evidence,²⁵ representing that they had obtained the certification dated August 24, 1995 by Antonio V. Osmeña, the developer of the Clarita Village and the attorney-in-fact of Carmen and Elena Siguenza, the owners of the Clarita Village,²⁶ to the effect that the road network of the Clarita Village had been donated to Cebu City. They appended to the motion the *Deed of Donation of Road Lots*²⁷ and the certification dated July 5, 1995²⁸ by Antonio B. Sanchez, Department Head III of the Office of the City Engineer, Department of Engineering and Public Works of Cebu City, stating that the road network within the Clarita Village “has been used as part of the road network of the City of Cebu and as such was asphalted by the city thru F.T. Sanchez Construction in 1980.” These documents, according to the Spouses Bardilas, were newly discovered

²⁵ Id. at 192-196.

²⁶ Id. at 198.

²⁷ Id. at 199-200.

²⁸ Id. at 201.

evidence that they “could not, with reasonable diligence, have discovered and produced at the trial.”²⁹

On November 13, 1995,³⁰ the RTC denied the motion for new trial because: (a) the *Deed of Donation of Road Lots* had been in the possession of the movants’ counsel, and had been in fact shown to the court, but had neither been offered nor marked as evidence during the trial; (b) the certifications (Annexes A and C of the motion for new trial) had derived their existence from the *Deed of Donation of Road Lots*, and could not be considered as newly discovered evidence; (c) the *Deed of Donation of Road Lots* did not bear the signature of then Acting City Mayor Eulogio Borres as the representative of the donee; and (d) the *Deed of Donation of Road Lots* had not been notarized. It noted that the failure to comply with the legal requirements for donations under the *Civil Code* rendered the donation void and invalid, and could not alter the result of the litigation.

With the denial of their motion for new trial, the Spouses Bardilas appealed to the CA.³¹

Decision of the CA

In their appeals, the Spouses Bardilas insisted that the RTC committed reversible errors in declaring:³²

- I. That the Mercaders are the owners of the easement of right of way in question.
- II. That the easement of right of way in question has been extinguished.
- III. In granting the Mercaders the right to use and occupy the extinguished easement which adjoins the Mercaders’ properties.
- IV. In awarding moral damages, attorney’s fees and costs of suit to the Mercaders in Civil Case No. CEB-12783.
- V. In dismissing Civil Case No. CEB-13384 and in declaring the closure of the road right of way in question by Clarita Village as lawful and valid.

On March 18, 2003, the CA promulgated the now assailed decision,³³ modifying the judgment of the RTC and disposing as follows:

²⁹ Id. at 192.

³⁰ Id. at 204-206.

³¹ Id. at 207-208.

³² CA *rollo*, pp. 33-34.

³³ Id. at 37-38; penned by Associate Justice Perlita J. Tirona (retired), and concurred in by Associate Justice Roberto A. Barrios (retired/deceased), and Associate Justice Edgardo F. Sundiam (retired/deceased).

WHEREFORE, the instant appeal is **PARTIALLY GRANTED**. The assailed decision of the Regional Trial Court of Cebu City, Branch 20 in Civil Case Nos. CEB-12783 and CEB-13384 is hereby **MODIFIED** to read as follows:

WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered in favor of respondents Spouses Jesus and Letecia Bardilas as against the petitioners Spouses Bernabe and Lorna Mercader, Oliver Mercader, Geraldine Mercader and Eqramay Mercader in Civil Case No. 12783:

- 1) **DECLARING** respondents Jesus and Letecia Bardilas as owners of the three (3) square meter wide road in question;
- 2) **GRANTING** to respondents Jesus and Letecia Bardilas the right to use and occupy the said three (3) square meter wide road; and
- 3) **ORDERING** petitioners to pay the respondents the sum of ₱20,000.00 as and for attorney's fees;
- 4) **ORDERING** the petitioners to pay the costs of suit;

and in Civil Case No. 13384:

- 1) **DISMISSING** the amended complaint filed by plaintiffs Spouses Jesus and Letecia Bardilas; and
- 2) **DECLARING** the road network of the Clarita Village still as private properties and not public.

SO ORDERED.

On April 28, 2003, the Spouses Mercader sought the reconsideration of the decision,³⁴ stating that the CA had “erred in awarding the 3 meter road right of way to the [Spouses Bardilas] and in ordering the respondent Mercader spouses, et al. to pay attorney’s fees.”³⁵ They argued that because Lot No. 5808-F-2-A and Lot No.5808-F-2-B used to be one lot denominated as Lot No. 5808-F-2 that had the same right of way leading to the Clarita Village, they “are also legally entitled to the other half of the right of way” as owners of one of the subdivided lots;³⁶ that, as shown in their Exhibit H,³⁷ Lot No. 5808-F-3 of the Spouses Bardilas “has another 3 meter road right of way towards another point of Buhisan Road which is only about 40 lineal

³⁴ Id. at 41.

³⁵ Id. at 43.

³⁶ Id. at 44.

³⁷ Records, Civil Case No. CEB-12783, p. 108.

meters”³⁸ from their property; and that the award of attorney’s fees was “not proper there being no legal basis to grant the award.”³⁹

On March 16, 2004,⁴⁰ however, the CA denied Spouses Mercader’s motion for reconsideration.

Hence, this appeal only insofar as Civil Case No. CEB-12783 was concerned.⁴¹

Issues

The Spouses Mercaders raise the same issues aired in their motion for reconsideration in the CA. They contend that the technical description of their property contained the phrase “with existing Right of Way (3.00 meters wide),” which signified that they were equally “entitled to the road-right-of-way being conferred upon them by TITLE pursuant to Article 622 of the New Civil Code.” They submit that:

Hence, they too should equally share in its retention for uses other than the easement after its non-user brought about by the closure of the exit point by Clarita Village Association. As borne out by the evidence, the respective properties of petitioners Sps. Bernabe and Lorna Mercader, on one hand, and Sps. Jesus and Letecia Bardilas, on the other hand, used to be a whole Lot 5808-F-2 with an area of 338 square meters before the same was subdivided into Lot 5808-F-2-A with an area of 89 square emters for the petitioner spouses and Lot 5808-F-2-B with an area of 249 square meters for the respondents. Before the subdivision, there was already a 3-meter wide road right of way leading towards Clarita Village. Thus, after the subdivision, the subject easement was annotated in both certificates of title as earlier stated. Very clearly, petitioners Bernabe and Lorna Mercader, and respondents Jesus and Letecia Bardilas, should equally share in the area of the easement. Consequently, the petitioners cannot be ordered to return the portion of easement on which part of petitioners' house and fence stand.⁴²

Ruling of the Court

We cannot sustain the petitioners’ claim that they acquired their right to the road right of way by title.

³⁸ CA *rollo*, p. 43.

³⁹ Id. at 44.

⁴⁰ Id. at 46.

⁴¹ Id. at 19.

⁴² Id. at 20-21.

Easement or servitude, according to *Valdez v. Tabisula*,⁴³ is “a real right constituted on another’s property, corporeal and immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody else to do something on his property for the benefit of another thing or person.” “It exists only when the servient and dominant estates belong to two different owners. It gives the holder of the easement an incorporeal interest on the land but grants no title thereto. Therefore, an acknowledgment of the easement is an admission that the property belongs to another.”⁴⁴

It is settled that road right of way is a discontinuous apparent easement⁴⁵ in the context of Article 622 of the *Civil Code*, which provides that continuous non-apparent easements, and discontinuous ones, whether apparent or not, may be acquired only by virtue of title. But the phrase *with existing Right of Way* in the TCT is not one of the modes of acquisition of the easement by virtue of a title. Acquisition *by virtue of title*, as used in Art. 622 of the *Civil Code*, refers to “the juridical act which gives birth to the easement, such as law, donation, contract, and will of the testator.”⁴⁶

A perusal of the technical description of Lot No. 5808-F-2-A indicates that the phrase *with existing Right of Way (3.00 meters wide)* referred to or described Lot No. 5808-F-2-B,⁴⁷ which was one of the boundaries defining Lot F-2-A. Moreover, under the Torrens system of land registration, the certificate of title attests “to the fact that the person named in the certificate is the owner of the property therein described, subject to such liens and encumbrances as thereon noted or what the law warrants or reserves. The objective is to obviate possible conflicts of title by giving the public the right to rely upon the face of the Torrens certificate and to dispense, as a rule, with the necessity of inquiring further. The Torrens system gives the registered owner complete peace of mind, in order that he will be secured in his ownership as long as he has not voluntarily disposed of any right over the covered land.”⁴⁸ The Torrens certificate of title is merely an evidence of ownership or title in the particular property described therein.⁴⁹

What really defines a piece of land is not the area mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits.⁵⁰ As shown in the subdivision plan of Lot No. 5808-F-

⁴³ G.R. No. 175510, July 28, 2008, 560 SCRA 332, 337-338.

⁴⁴ *Bogo-Medellin Milling Co., Inc. v. Court of Appeals*, G.R. No. 124699, July 31, 2003, 407 SCRA 518, 526.

⁴⁵ *Costabella Corporation v. Court of Appeals*, G.R. No. 80511, January 25, 1992, 193 SCRA 333, 339; *Ronquillo v. Roco*, 103 Phil. 84 (1958); *Cuaycong v. Benedicto*, 37 Phil. 781 (1919).

⁴⁶ II Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 1992, p. 361.

⁴⁷ Exhibit “2” for respondents, RTC records for Civil Case No. CEB-12783, p. 37.

⁴⁸ *Casimiro Development Corporation v. Renato L. Mateo*, G.R. No. 175485, July 27, 2011, 654 SCRA 676, 685-686.

⁴⁹ *Id.*

⁵⁰ *Notarte v. Notarte*, G.R. No. 180614, August 29, 2012, 679 SCRA 378; *Heirs of Anastacio Fabela v. Court of Appeals*, G.R. No. 142546, August 9, 2001, 362 SCRA 531.

2,⁵¹ and based on the technical description of Lot No. 5808-F-2-B as appearing in TCT No. 107915,⁵² the right of way in dispute, which is “(B)ounded on the SW., along line 1-2 by Lot 5808-F-1, Psd-07-01-004579; on the West along line 2-3 by Lot 5726, Cebu Cad.; on the North along line 3-4-5 by Lot 5725, Cebu Cadastre” was part of Lot No. 5808-F-2-B of the Spouses Bardilas.

It is noteworthy that an encumbrance “subject to 3 meters wide right of way” was annotated on TCT No. 107915, which covers Lot No. 5808-F-2-B of the Spouses Bardilas.⁵³ As the owners of the servient estate, the Spouses Bardilas retained ownership of the road right of way even assuming that said encumbrance was for the benefit of Lot No. 5808-F-2-A of the Spouses Mercader. The latter could not claim to own even a portion of the road right of way because Article 630 of the *Civil Code* expressly provides that “[t]he owner of the servient estate retains ownership of the portion on which the easement is established, and may use the same in such manner as not to affect the exercise of the easement.”

With the right of way rightfully belonging to them as the owners of the burdened property, the Spouses Bardilas remained entitled to avail themselves of all the attributes of ownership under the *Civil Code*, specifically: *jus utendi*, *jus fruendi*, *jus abutendi*, *jus disponendi* and *jus vindicandi*. Article 428 of the *Civil Code* recognizes that the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.⁵⁴ In that regard, the CA cogently pointed out:⁵⁵

Moreover, as owners of the three (3) square meter wide road in dispute, the appellants (referring to the Bardilas spouses) may rightfully compel the petitioners-appellees to pay to them the value of the land upon which a portion of their (petitioners-appellees) house encroaches, and in case the petitioners-appellees fail to pay, the appellants may remove or demolish the encroaching portion of the petitioners-appellees’ house. xxxx

The second issue concerns the award of attorney’s fees. Relying on *Bernardo v. Court of Appeals, (Special Sixth Division)*,⁵⁶ the petitioners argue that the CA erred “in awarding attorney’s fees to the appellants after eliminating or refusing to award moral and exemplary damages;”⁵⁷ that the CA did not make any finding to the effect “that the appellants were compelled to litigate with third persons or to incur expenses to protect their

⁵¹ Records, Civil Case No. CEB-12783, p. 38.

⁵² Id. at 61.

⁵³ Exhibit “C” for Petitioners (Also Exhibit “14” for Respondents), RTC Records of Civil Case No. CEB-12783, p. 63.

⁵⁴ *Borbajo v. Hidden View Homeowners, Inc.*, G.R. No. 152440, January 31, 2005, 450 SCRA 315, 325.

⁵⁵ *Rollo*, p. 36.

⁵⁶ G.R. No. 106153, July 14, 1997, 275 SCRA 413, 432.

⁵⁷ *Rollo*, p. 21.

interest;”⁵⁸ and that, consequently, the grant of attorneys’ fees to the Spouses Bardillas lacked legal basis.

The award of attorney’s fees and expenses of litigation is governed by Article 2208 of the *Civil Code*, to wit:

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 is awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil case 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;
- (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.

In *Philippine National Construction Corporation v. APAC Marketing Corporation*,⁵⁹ the Court opined that whenever attorney’s fees are granted, the basis for the grant must be clearly expressed in the judgment of the court. It expounded on why this is so:

⁵⁸ Id.

⁵⁹ G.R. No. 190957, June 5, 2013, 697 SCRA 441, 449-450.

In *ABS-CBN Broadcasting Corp. v. CA*, this Court had the occasion to expound on the policy behind the grant of attorney's fees as actual or compensatory damages:

(T)he law is clear the in the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstance provided for in Article 2208 of the Civil Code.

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

In *Benedicto v. Villaflora*, we explained the reason behind the need for the courts to arrive upon an actual finding to serve as basis for a grant of attorney's fees, considering the dual concept of these fees as ordinary and extraordinary:

It is settled that the award of attorney's fees is the exception rather than the general rule; counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.

We can glean from the above ruling that attorney's fees are not awarded as a matter of course every time a party wins. We do not put a premium on the right to litigate. On occasions that those fees are awarded, the basis for the grant must be clearly expressed in the decision of the court.

In awarding attorney's fees, the CA relied on Article 2208 (11) of the *Civil Code*. The exercise of the discretion to allow attorney's fees must

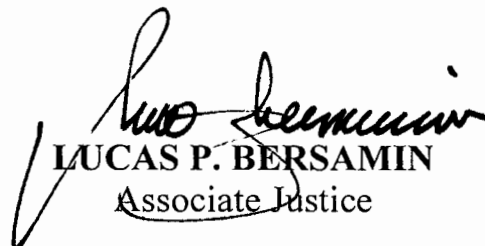
likewise be justified. In *Eastern Shipping Lines, Inc. v. Margarine-Verkaufs-Union*,⁶⁰ the Court said:

Insofar as the present case is concerned, the lower court made no finding that it falls within any of the exceptions that would justify the award of attorney's fees, such as gross and evident bad faith in refusing to satisfy a plainly valid, just and demandable claim. Even under the broad eleventh exception of the cited article which allows the imposition of attorney's fees "in any other case where the court deems it just and equitable that attorney's fees and expenses in litigation should be recovered," the Court stressed in *Buan, supra*, that "the conclusion must be borne out by findings of facts and law. What is just and equitable in a given case is not a mere matter of feeling but of demonstration. . . . Hence, the exercise of judicial discretion in the award of attorney's fees under Article 2208 (11) of the Civil Code demands a factual, legal or equitable justification upon the basis of which the court exercises its discretion. Without such justification, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture." The summary award of counsel's fees made in the appealed judgment must therefore be set aside.

Considering that the decision of the CA does not express any justification other than stating that attorney's fees were being awarded to the respondents "pursuant to paragraph 11 of Article 2208 of the New *Civil Code*," the award by the CA must be set aside; otherwise, attorney's fees would be turned into a premium on the right to litigate, which is prohibited. Moreover, attorney's fees, being in the nature of actual damages, should be based on the facts on record and the Court must delineate the legal reason for such award.⁶¹

WHEREFORE, the Court **AFFIRMS** the judgment promulgated on March 18, 2003 in C.A.-G.R. CV No. 53153 with respect to Civil Case No. CEB-12783 subject to the **MODIFICATION** th at the portion "ordering petitioners to pay the respondents the sum of ₱20,000.00 as and for attorney's fees" is **DELETED**; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

⁶⁰ No. L-31087, September 27, 1979, 93 SCRA 257, 262; *The Congregation of the Religious of the Virgin Mary v. Court of Appeals*, G.R. No. 126363, June 26, 1998, 291 SCRA 385; *Refractories Corporation of the Philippines v. Intermediate Appellate Court*, G.R. No. 70839, August 17, 1989, 176 SCRA 539.

⁶¹ *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, January 23, 2006, 479 SCRA 404, 414.

WE CONCUR:

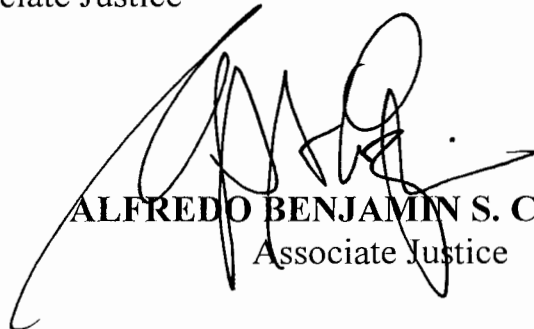
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MARIA LOURDES P. A. SERENO
Chief Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

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