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THIRD DIVISION

[G.R. No. 209359. October 17, 2018]

METROHEIGHTS SUBDIVISION HOMEOWNERS ASSOCIATION, INC., *petitioner, vs.* **CMS CONSTRUCTION AND DEVELOPMENT CORPORATION, TOMASITO T. CRUZ, TITA F. CRUZ, SIMONETTE F. CRUZ, ANGEL T. CRUZ, ERNESTO T. CRUZ and METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS),** *respondents.*

SYLLABUS

1. CIVIL LAW; THE NEW CIVIL CODE; PRINCIPLE OF ABUSE OF RIGHTS; ELEMENTS; WHERE A PERSON EXERCISES HIS RIGHTS BUT DOES SO ARBITRARILY OR UNJUSTLY OR PERFORMS HIS DUTIES IN A MANNER THAT IS NOT IN KEEPING WITH HONESTY AND GOOD FAITH, HE OPENS HIMSELF TO LIABILITY.— Article 19 of the New Civil Code deals with the principle of abuse of rights x x x. Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. "The principle of abuse of rights x x x departs from the classical theory that 'he who uses a right injures no one.' The modern tendency is to depart from the classical and traditional theory, and to grant indemnity for damages in cases where there is an abuse of rights, even when the act is not illicit." "Article 19 [of the New Civil Code] was intended to expand the concept of torts by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to provide[,] specifically in statutory law. If mere fault or negligence in one's acts can make him liable for damages for injury caused thereby, with more reason should abuse or bad faith make him liable. The absence of good faith is essential to abuse of right. Good faith is an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of the law, together with an absence of all information or belief of fact which would

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render the transaction unconscientious. In business relations, it means good faith as understood by men of affairs." "While Article 19 [of the New Civil Code] may have been intended as a mere declaration of principle, the 'cardinal law on human conduct' expressed in said article has given rise to certain rules, *e.g.* that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability. The elements of an abuse of rights under Article 19 are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another."

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE PARTIES MAY RAISE ONLY QUESTIONS OF LAW BECAUSE THE SUPREME COURT IS NOT A TRIER OF FACTS EXCEPT WHEN THE FINDINGS OF FACT BY THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE TRIAL COURT.— The CA found that the rehabilitation project was not undertaken without notice to petitioner, which was contrary to the RTC's finding that there was no notice given to petitioner. The matter of whether there was notice to petitioner is factual. It is elementary that a question of fact is not appropriate for a petition for review on *certiorari* under Rule 45 of the Rules of Court. The parties may raise only questions of law because the Supreme Court is not a trier of facts. However, we may review the findings of fact by the CA when they are contrary to those of the trial court, as in this case.

3. CIVIL LAW; THE NEW CIVIL CODE; PRINCIPLE OF ABUSE OF RIGHTS; RESPONDENTS SHOULD BE HELD LIABLE FOR DAMAGES FOR THE CUTTING OFF, DISCONNECTION AND TRANSFER OF PETITIONER'S WATER SERVICE CONNECTION WITHOUT THE LATTER'S CONSENT AND NOTIFICATION WHICH RESULTED TO STOPPAGE OF WATER SUPPLY IN PETITIONER'S AREA.— [R]espondents admitted in their respective Comments that the inconvenience of the temporary stoppage of water supply in petitioner's area was highly inevitable in the process of changing petitioner's water pipe size crossing the bridge up to Visayas Avenue where the tapping source is

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connected. Notwithstanding, respondents proceeded with the cutting off and disconnection of petitioner's water connection without the latter's consent and notification thereby causing prejudice or injury to the petitioner's members because of the unexpected water loss for three (3) days. Respondents' actions were done in total disregard of the standards set by Article 19 of the New Civil Code which entitles petitioner to damages. In *MWSS v. Act Theater, Inc.*, we held that petitioner's act of cutting off respondents' water service connection without prior notice was arbitrary, injurious and prejudicial to the latter, justifying the award of damages under Article 19 of the New Civil Code.

4. ID.; ID.; ID.; HAVING THE RIGHT SHOULD NOT BE CONFUSED WITH THE MANNER BY WHICH SUCH RIGHT IS TO BE EXERCISED, AS THE EXERCISE OF A RIGHT ENDS WHEN THE RIGHT DISAPPEARS, AND IT DISAPPEARS WHEN IT IS ABUSED, ESPECIALLY TO THE PREJUDICE OF OTHERS.— We do not agree with the CA's finding that respondents' actions were merely consequential to the exercise of their rights and obligations to manage and maintain the water supply system. "Having the right should not be confused with the manner by which such right is to be exercised." Article 19 of the New Civil Code sets the standard in the exercise of one's rights and in the performance of one's duties, *i.e.*, he must act with justice, give everyone his due, and observe honesty and good faith. "The exercise of a right ends when the right disappears, and it disappears when it is abused, especially to the prejudice of others. The mask of a right without the spirit of justice which gives it life is repugnant to the modern concept of social law." Here it was established, x x x, that respondents indeed abused their right.

5. COMMERCIAL LAW; CORPORATIONS; DIRECTORS OR OFFICERS WHEN PERSONALLY LIABLE FOR THE DEBTS OF THE CORPORATION.— We find that respondents MWSS and CMS Construction should be held liable for damages to petitioner but not the Cruzes who are the directors and stockholders of respondent CMS Construction. Section 31 of the Corporation Code is the governing law on personal liability of officers for the debts of the corporation, to wit: Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently

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unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. We find that petitioner failed to show that the Cruzes committed any of those above-quoted acts to make them personally liable.

6. **CIVIL LAW; THE CIVIL CODE; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; CANNOT BE PRESUMED, BUT MUST BE DULY PROVED, AND PROVED WITH A REASONABLE DEGREE OF CERTAINTY. —** Petitioner is entitled to the award of actual damages. Petitioner alleged that it had spent ₱190,000.00 for the transfer location of tapping/change size of the water service connection, which was unilaterally cut off, disconnected and transferred by respondents. However, only the amount of ₱161,541.85 was duly proved by the checks, which petitioner had paid to their contractor, thus, such amount should be awarded. "Actual or compensatory damages cannot be presumed, but must be duly proved, and proved with a reasonable degree of certainty."

7. **ID.; ID.; ID.; EXEMPLARY DAMAGES MAY BE IMPOSED BY WAY OF EXAMPLE OR CORRECTION FOR THE PUBLIC GOOD WHILE ATTORNEY'S FEES MAY BE AWARDED WHERE PETITIONER WAS COMPELLED TO LITIGATE TO PROTECT ITS INTEREST BY REASON OF THE UNJUSTIFIED ACT OF RESPONDENTS.—** Petitioner is also entitled to the award of exemplary damages in the amount of ₱100,000.00. Exemplary damages may be imposed by way of example or correction for the public good. We also award the amount of ₱50,000.00 as attorney's fees as petitioner was compelled to litigate to protect its interest by reason of the unjustified act of respondents.

8. **ID.; ID.; ID.; NOMINAL DAMAGES CANNOT BE AWARDED WHEN THERE IS AN AWARD OF ACTUAL DAMAGES, AS NOMINAL DAMAGES CANNOT CO-EXIST WITH ACTUAL OR COMPENSATORY DAMAGES; 6% LEGAL INTEREST PER ANNUM IMPOSED ON THE MONETARY AWARDS.—** We find no basis to award nominal damages since there is an award of

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actual damages. "Nominal damages cannot co-exist with actual or compensatory damages." [I]n line with prevailing jurisprudence, legal interest at the rate of 6% per annum is imposed on the monetary awards computed from the finality of this Decision until full payment.

APPEARANCES OF COUNSEL

Reyes Francisco Tecson & Associates for petitioner.
Anabella S. Altuna for respondent MWSS.
CRC Law Firm for respondent CMS Construction.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[1] and the Resolution[2] of the Court of Appeals (CA), dated October 10, 2012 and September 30, 2013, respectively, in CA-G.R. CV No. 89085.

On June 29, 1992, petitioner Metroheights Subdivision Homeowners Association, Inc. filed with the Regional Trial Court (RTC)[3] of Quezon City a complaint[4] for damages with prayer for a temporary restraining order and/or writ of preliminary injunction and writ of preliminary mandatory injunction against respondents CMS Construction and Development Corporation (CMS Construction), Tomasito Cruz, Tita Cruz, Simonette Cruz, Angel Cruz, Ernesto Cruz (the Cruzes), and Metropolitan Waterworks and Sewerage System (MWSS).

Petitioner alleged, among others, that it sought the assistance of respondent MWSS to address the insufficient supply of water

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[1] Penned by Justice Vicente S.E. Veloso, and concurred in by Justices Jane Aurora C. Lantion and Eduardo B. Peralta, Jr.; *rollo*, pp. 45-66.

[2] *Id*. at 94.

[3] Raffled off to Branch 77, docketed as Civil Case No. Q-92-12601.

[4] *Rollo*, pp. 106-116.

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in its subdivision to which the latter advised the improvement and upgrading of its private internal water distribution lines, foremost of which was the transfer or change in the location of its tapping source and the change in size of its water service line from the old line tapped at Sanville Subdivision to a new tapping source on Visayas Avenue, Quezon City; that on November 16, 1990, petitioner entered into a contract with respondent MWSS for the new water service connection, and respondent MWSS awarded the project to a contractor which implemented the same, the cost of which was solely shouldered by contribution from petitioner's members amounting to ₱190,000.00, inclusive of labor, materials, and respondent MWSS' fees and charges; and that since then, there was already sufficient and strong water pressure twenty-four (24) hours a day in the petitioner's subdivision.

However, sometime in April 1992, respondent CMS Construction made diggings and excavations, and started to lay water pipes along Fisheries Street and Morning Star Drive in Sanville Subdivision, Quezon City, petitioner's neighboring subdivision; that in the process, respondent CMS Construction, with the knowledge and consent of respondent MWSS but without petitioner's knowledge and consent, unilaterally cut-off and disconnected the latter's new and separate water service connection on Visayas Avenue; that on May 28, 1992, petitioner's members were waterless, which lasted for three (3) days, and that petitioner's polyvinyl chloride (PVC) pipes and radius elbow, valued at around ₱30,000.00, were stolen by respondent CMS Construction's workers; that when petitioner's officers discovered the illegal cutting of the water connection on May 30, 1992, they immediately complained to the respondents and demanded for the restoration of their water line; that respondent CMS Construction only made a temporary reconnection with the use of a 2-inch rubber hose to the new water line it constructed at Sanville Subdivision; and that despite petitioner's verbal and written demands, respondents have failed to restore petitioner's water line connection in its original state and to return the missing PVC pipes and radius elbow.

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In its Answer with Counterclaim, respondent MWSS averred, among others, that on August 16, 1991, it entered into a contract with respondent CMS Construction for the mainlaying and rehabilitation of the existing water main and appurtenances, and the installation/replacement of water service connection at Sanville Subdivision, Quezon City; that in connection with the said undertaking, it necessitated the creek crossing of a 150 mm cast iron pipe to be placed alongside the bridge situated along Morning Star Drive in Quezon City; that alongside the said bridge, there existed two pipes with casings, one of which was owned by petitioner; that it designed the placing of the 150 mm cast iron pipe alongside the above-stated bridge and the design included the interconnection of the two existing pipes; that the aforementioned interconnection features the use of split tap tees, one of which was for the 100 mm pipe allegedly owned by petitioner; and that the infrastructure project aimed to improve the water pressure of eight (8) subdivisions in Tandang Sora which included Metroheights Subdivision.

On the other hand, respondents CMS Construction and the Cruzes claimed that they were awarded by respondent MWSS a contract for the latter's Manila Water Supply Rehabilitation Project II, covering the Tandang Sora area, to provide an improved and equitable water distribution to eight (8) subdivisions located therein; that its proposed working drawings had been reviewed and approved by respondent MWSS; that it is not true that it started laying water pipes along the Morning Star Drive water pipeline by unilaterally cutting off and disconnecting petitioner's existing water pipeline measuring 100-mm (4-inches) in diameter along the said creek as the same was replaced with a PVC water pipe measuring 150-mm in diameter; that the alleged cutting off, disconnection and replacement of petitioner's pipeline bigger in diameter took only three to four hours, and the resumption of the water flow after replacement could not have rendered the homeowners waterless for three (3) days; and that the officers and engineers of petitioner were previously consulted on the rehabilitation project.

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On March 30, 1999, the RTC rendered a Decision,[5] the dispositive portion of which provides:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff. Defendants are hereby ordered to jointly and severally pay plaintiff the sum of:
>
> 1. ₱190,000.00 as and by way of actual damages;
> 2. ₱100,000.00 as and by way of nominal damages;
> 3. ₱100,000.00 as and by way of exemplary damages;
> 4. ₱50,000.00 as and by way of attorney's fees; and
> 5. The costs of this [s]uit.
>
> SO ORDERED[.][6]

The RTC found, among others, that respondents did not have the authority to simply cut, disconnect and transfer petitioner's water supply with impunity, without notice to or without getting its consent; and that respondents acted in concert and in bad faith, which made them jointly and severally liable for damages.

Respondent MWSS filed its notice of appeal while respondents CMS Construction and the Cruzes filed a motion for new trial which the RTC granted.

On May 18, 2006, the RTC issued a Decision[7] which affirmed its earlier Decision dated March 30, 1999.

The RTC found that respondents' claim of *damnum absque injuria* was not tenable. Under the principle of *damnum absque injuria*, the legitimate exercise of a person's right, even if it causes loss to another, does not automatically result in an actionable injury and the law does not prescribe a remedy for the loss. However, this principle admits of exception as when there is an abuse of a person's right. The exercise of one's right should be done in a manner that will not cause injustice to another. Since water is a basic necessity, the lack thereof

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[5] *Id*. at 237-245; per Judge Vivencio S. Baclig.

[6] *Id*. at 245.

[7] *Id*. at 246-252.

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not only caused inconvenience but posed health concerns as well. Notice to petitioner of the interruption of the water supply should have been made prior to the implementation of the project.

Respondents' motion for reconsideration was denied.

Respondents filed their appeal with the CA. On October 10, 2012, the CA issued its assailed decision, the decretal portion of which reads:

WHEREFORE, the appeal is GRANTED. The Decision dated May 18, 2006, as well as the Decision dated March 30, 1999 of the Regional Trial Court of Quezon City are REVERSED and SET ASIDE. The complaint below is hereby DISMISSED for lack of merit.[8]

The CA found that the respondents' rehabilitation project was not undertaken without any notice at all; that respondents' actions were merely consequential to the exercise of their rights and obligations to manage and maintain the water supply system, an exercise which includes water rehabilitation and improvement within the area, pursuant to a prior agreement for the water supply system; and that the alleged abuse of right was not sufficiently established.

Petitioner's motion for reconsideration was denied by the CA in a Resolution dated September 30, 2013.

Hence, this petition for review on *certiorari* filed by petitioner, raising the following issues:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS PRIOR NOTICE UPON THE PETITIONER OF THE REHABILITATION PROJECT BEFORE IT WAS UNDERTAKEN BY THE RESPONDENTS;

WHETHER OR NOT THE COURT OF APPEALS CANNOT BE HELD LIABLE UNDER ARTICLE 19 OF THE CIVIL CODE;

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THE ABUSE OF RIGHT OF THE RESPONDENTS WAS NOT SUFFICIENTLY ESTABLISHED;

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[8] *Id*. at 65.

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WHETHER OR NOT THE COURT OF APPEALS ERRED IN DISMISSING THE COMPLAINT AND ABSOLVING RESPONDENTS OF ANY CIVIL LIABILITY IN FAVOR OF THE PETITIONER.[9]

The issue for resolution is whether the respondents should be held liable for damages for the cutting off, disconnection and transfer of petitioner's existing separate water service connection on Visayas Avenue without the latter's knowledge and consent which also resulted in petitioner's subdivision being waterless.

To begin with, to address the perennial problem of insufficient supply of water in Metroheights Subdivision, petitioner had filed its application for transfer location of tapping/change size of the water service connection on Visayas Avenue with respondent MWSS, which the latter approved and implemented; thus, petitioner had uninterrupted water supply. On August 16, 1991, respondent MWSS entered into a contract with respondent CMS Construction for the mainlaying and rehabilitation of existing water main and appurtenances, and the installation/ replacement of water service connection at Sanville Subdivision, Quezon City. In the process, petitioner's existing water service connection on Visayas Avenue was cut-off, disconnected and transferred by respondents, and petitioner's homeowners experienced loss of water supply for three (3) days.

The RTC found respondents liable for damages on the basis of abuse of right under Article 19 of the New Civil Code, giving credence to petitioner's claim that there was no notice to it prior to the implementation of respondents' project. The CA reversed the RTC and found that there was no abuse of right committed by the respondents, as the project was not undertaken without notice to petitioner.

We reverse the CA.

Article 19 of the New Civil Code deals with the principle of abuse of rights, thus:

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[9] *Id*. at 19.

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Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

"The principle of abuse of rights x x x departs from the classical theory that 'he who uses a right injures no one.' The modern tendency is to depart from the classical and traditional theory, and to grant indemnity for damages in cases where there is an abuse of rights, even when the act is not illicit."[10]

"Article 19 [of the New Civil Code] was intended to expand the concept of torts by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to provide[,] specifically in statutory law. If mere fault or negligence in one's acts can make him liable for damages for injury caused thereby, with more reason should abuse or bad faith make him liable. The absence of good faith is essential to abuse of right. Good faith is an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of the law, together with an absence of all information or belief of fact which would render the transaction unconscientious. In business relations, it means good faith as understood by men of affairs."[11]

"While Article 19 [of the New Civil Code] may have been intended as a mere declaration of principle, the 'cardinal law on human conduct' expressed in said article has given rise to certain rules, *e.g.* that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability. The elements of an abuse of rights under Article 19 are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another."[12]

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[10] *Sea Commercial Company, Inc. v. Court of Appeals*, 377 Phil. 221, 229 (1999), citing I. Tolentino, *Civil Code of the Philippines*, p. 60 et seq.

[11] *Id.* at 229-230. (Citations omitted)

[12] *Id.* at 230. (Citations omitted)

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Here, it was admitted by Engr. Victor Cariaga,[13] an MWSS consultant, and Mr. Tomasito Cruz,[14] respondent CMS Construction's President, that petitioner has its own pipeline or source of water coming from Visayas Avenue. Respondents also admitted that because of the rehabilitation project they were undertaking, petitioner's water pipeline, measuring 100 mm in diameter along the side of the creek, was replaced with a PVC plastic pipe 150 mm in diameter; and that petitioner's water line had to be transferred, and in the process of transferring, petitioner's existing water line had to be cut off. Considering that respondents would disconnect and change petitioner's existing water line tapped from Visayas Avenue to another tapping source, good faith and prudence dictate that petitioner should be informed or notified of such actions, as respondents admitted that prior notice to affected areas is a standard operating procedure. More so, petitioner's members had spent their own money to pay for their existing water connection on Visayas Avenue to address the perennial problem of the lack of water supply in their area.

The CA found that the rehabilitation project was not undertaken without notice to petitioner, which was contrary to the RTC's finding that there was no notice given to petitioner. The matter of whether there was notice to petitioner is factual. It is elementary that a question of fact is not appropriate for a petition for review on *certiorari* under Rule 45 of the Rules of Court. The parties may raise only questions of law because the Supreme Court is not a trier of facts. However, we may review the findings of fact by the CA when they are contrary to those of the trial court, as in this case.[15]

In finding that there was notice given by the respondents to petitioner, the CA relied on the testimonies of Tomasito Cruz, President of respondent CMS Construction, that prior to the

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[13] *Rollo*, p. 330; TSN, October 18, 2000, p. 19.

[14] *Id.* at 282; TSN, November 29, 2000, p. 30.

[15] *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990).

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actual implementation of the project, permissions from the Office of the City Engineer and the affected homeowners' associations were sought; and that of Engr. Victor Cariaga, consultant of respondent MWSS, saying that it is an operating procedure to give letters to the homeowners, as well as to the barangays affected, notifying them of the objective of the project and requesting for meetings.

Notably, however, the CA failed to consider that Tomasito Cruz testified during his cross-examination that there was no notice to petitioner coming from their company, to wit:

Q: Now, do I get from you that CMS or any of its officers including you did not personally give a written notice to the plaintiff prior to the implementation of this water rehab project?

A: Our company...that is not our responsibility. Because the one who owns the project is MWSS and they are the ones who asked for permission.

ATTY. REYES, JR.: Okay.

Q: In other words, you agree with me that there is no such notice coming from your party CMS? There is no such notice?

A: From our company, none, sir.

Q: Now, is it your assumption that there was such a notice given by MWSS?

A: From what I know there was a notice. In fact, there was even a meeting, sir.

Q: Did you happen to see a copy of this written notice from the MWSS?

A: No, sir.

Q: Since 1992, when the contract was awarded and then later implemented up to this present time, did you ever have an occasion to go to MWSS and ask for a copy of that alleged written notice to the plaintiff?

A: I did not ask for that, sir. Because from what I know, because there was a meeting, there was already an agreement.

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Q: In short, Mr. witness at present you cannot produce any documentary proof of that allege[d] notice coming from MWSS?

A: None, sir.[16]

The alleged meetings, claimed by Tomasito Cruz to have taken place to show that petitioner had already been notified of the rehabilitation project, were not substantiated at all. Even Engr. Cariaga's assertion that it is an operating procedure to give letters to the homeowners, as well as the barangays affected, regarding the objective of the project and calling for meetings was not also established by any documentary evidence. It is, therefore, established that there was no notice, not even a generalized notice, given by respondents to petitioner regarding the rehabilitation project.

In *Manila Gas Corporation v. Court of Appeals*, [17] we held:

What is peculiar in the stand of Defendant is that while it would insist on the giving of notices and warnings, it did not have any competent and sufficient evidence to prove the same. Demands in open were made by Plaintiff counsel whether Defendant could show any written evidence showing that notices and warnings were sent to Plaintiff. Not a single piece of evidence was produced. Normally, if a notice is refused, then the original and its copies would still be in the hands of the public utility concerned. In the instant case, it has to be repeated, not a single copy, original or duplicate, triplicate, etc. of any notice to pay or warning of disconnection was produced in court. The court cannot believe that Defendant, as what the testimonies of its witnesses would like to impress upon this Court, conducts its business that way. Defendant is a big business concern and it cannot be said that it treats its business as a joke. Its personnel should realize this, for only with such an awareness can they respond faithfully to their responsibilities as members of a big business enterprise imbued with public interest over which the Philippine

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[16] *Rollo*, pp. 280-281; TSN, November 29, 2000, pp. 28-29.

[17] 188 Phil. 582 (1980).

[18] *Id.* at 595.

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Government is concerned.[18]

In fact, it was only after petitioner's officer investigated the reason behind the loss of water supply in their subdivision that it was learned that their existing line was cut-off and transferred by respondents. Also, it was only when petitioner's officer went to the office of respondent CMS Construction and complained about the loss of water supply in their subdivision that petitioner's homeowners' water line was temporarily reconnected with a 2-inch rubber hose. The testimony of respondent CMS Construction's President revealed this matter on cross-examination, to wit:

COURT: So, you are saying Mr. witness that you visited [the] site on the very day when the officers of the association came to your office and complained that they have no water?

A: Yes, Your HONOR.

ATTY. REYES, JR.: Okay.

Q: And you claimed that you went to the site on the same day, you saw that there was already a connection of the water supply line of the plaintiff to the new line that you installed and you claimed that there was water on the line but it cannot reach plaintiff?

A: Yes, sir.

ATTY. REYES, JR.: Okay.

Q: Was the connection between the water line system of plaintiff to the new line that you installed at that time when you visited through a temporary rubber hose?

A: The reason why we put the rubber hose just like in electricity it is like a "jumper". Because of their complaint that they had no water. That was the idea of the project engineer of MWSS, sir.

x x x x x x x x x

Q: Therefore, it is correct to say that without the temporary connection made through a rubber hose there would be no water for the plaintiff since the time of disconnection?

A: Well, sir, it did not help.

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x x x x x x x x x

Q: So, in short, you are claiming that whether or not the connection was made there was no water, is that what you are claiming?

A: There was water, but it was weak flow.[19]

Clearly, had petitioner's officer not complained about the water service interruption in their subdivision and the rubber hose connection was not made to temporarily fix petitioner's concern, petitioner's homeowners would have continuously suffered loss of water service.

Notably, respondents admitted in their respective Comments that the inconvenience of the temporary stoppage of water supply in petitioner's area was highly inevitable in the process of changing petitioner's water pipe size crossing the bridge up to Visayas Avenue where the tapping source is connected. Notwithstanding, respondents proceeded with the cutting off and disconnection of petitioner's water connection without the latter's consent and notification thereby causing prejudice or injury to the petitioner's members because of the unexpected water loss for three (3) days. Respondents' actions were done in total disregard of the standards set by Article 19 of the New Civil Code which entitles petitioner to damages.

In *MWSS v. Act Theater, Inc.*,[20] we held that petitioner's act of cutting off respondents' water service connection without prior notice was arbitrary, injurious and prejudicial to the latter, justifying the award of damages under Article 19 of the New Civil Code, thus:

> When a right is exercised in a manner which discards these norms (set under Art. 19) resulting in damage to another, a legal wrong is committed for which actor can be held accountable. In this case, the petitioner failed to act with justice and give the respondent what is due to it when the petitioner unceremoniously cut off the respondent's water service connection. As correctly found by the appellate court:

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[19] *Rollo*, pp. 292-294; TSN, November 29, 2000, pp. 40-42.

[20] 476 Phil. 486 (2004).

While it is true that MWSS had sent a notice of investigation to plaintiff-appellee prior to the disconnection of the latter's water services, this was done only a few hours before the actual disconnection. Upon receipt of the notice and in order to ascertain the matter, Act sent its assistant manager Teodulo Gumalid, Jr. to the MWSS office but he was treated badly on the flimsy excuse that he had no authority to represent Act. Act's water services were cut at midnight of the day following the apprehension of the employees. Clearly, the plaintiff-appellee was denied due process when it was deprived of the water services. As a consequence thereof, Act had to contract another source to provide water for a number of days. Plaintiff-appellee was also compelled to deposit with MWSS the sum of ₱200,000.00 for the restoration of their water services.[21]

We do not agree with the CA's finding that respondents' actions were merely consequential to the exercise of their rights and obligations to manage and maintain the water supply system. "Having the right should not be confused with the manner by which such right is to be exercised."[22] Article 19 of the New Civil Code sets the standard in the exercise of one's rights and in the performance of one's duties, *i.e.*, he must act with justice, give everyone his due, and observe honesty and good faith. "The exercise of a right ends when the right disappears, and it disappears when it is abused, especially to the prejudice of others. The mask of a right without the spirit of justice which gives it life is repugnant to the modern concept of social law."[23] Here it was established, as shown by the above discussions, that respondents indeed abused their right.

We find that respondents MWSS and CMS Construction should be held liable for damages to petitioner but not the Cruzes who are the directors and stockholders of respondent CMS Construction. Section 31 of the Corporation Code is the governing law on personal liability of officers for the debts of the corporation, to wit:

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[21] *Id.* at 491-492. (Citations omitted)

[22] *Id.* at 491. (Citation omitted)

[23] *De Guzman v. NLRC*, 286 Phil. 885, 893 (1992).

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Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

We find that petitioner failed to show that the Cruzes committed any of those above-quoted acts to make them personally liable.

Petitioner is entitled to the award of actual damages. Petitioner alleged that it had spent ₱190,000.00 for the transfer location of tapping/change size of the water service connection, which was unilaterally cut off, disconnected and transferred by respondents. However, only the amount of ₱161,541.85 was duly proved by the checks, which petitioner had paid to their contractor, thus, such amount should be awarded. "Actual or compensatory damages cannot be presumed, but must be duly proved, and proved with a reasonable degree of certainty."[24]

Petitioner is also entitled to the award of exemplary damages in the amount of ₱100,000.00. Exemplary damages may be imposed by way of example or correction for the public good. We also award the amount of ₱50,000.00 as attorney's fees as petitioner was compelled to litigate to protect its interest by reason of the unjustified act of respondents.

We find no basis to award nominal damages since there is an award of actual damages. "Nominal damages cannot co-exist with actual or compensatory damages."[25]

Finally, in line with prevailing jurisprudence, legal interest at the rate of 6% per annum is imposed on the monetary

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[24] See *Dee Hua Liong Electrical Equipment Corp. v. Reyes*, 230 Phil. 101, 106 (1986).

[25] *Dr. Armovit v. Court of Appeals*, 263 Phil. 412, 421 (1990).

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awards computed from the finality of this Decision until full payment.[26]

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated October 10, 2012 and the Resolution dated September 30, 2013 of the Court of Appeals in CA-G.R. CV No. 89085 are hereby **REVERSED** and **SET ASIDE**. The Decisions, dated March 30, 1999 and May 18, 2006, of the Regional Trial Court, Branch 77, of Quezon City are hereby **AFFIRMED** with **MODIFICATION**.

Thus, as modified, the Decision dated March 30, 1999 of the Regional Trial Court is as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff Metroheights Subdivision Homeowners Association, Inc. Defendants Metropolitan Waterworks and Sewerage System and CMS Construction and Development Corporation are hereby ordered to jointly and severally pay plaintiff the sum of:
>
> (a) ₱161,541.85 as and by way of actual damages;
> (b) ₱100,000.00 as and by way of exemplary damages;
> (c) ₱50,000.00 as and by way of attorney's fees; and
> (d) The costs of this suit.
>
> All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Leonen, Reyes, J. Jr., and *Hernando, JJ.*, concur.

Gesmundo, J., on vacation leave.

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[26] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).