



Republic of the Philippines  
Supreme Court  
Baguio City

SECOND DIVISION

**RICARDO CHU, JR. and DY  
KOK ENG,**

**G.R. No. 175428**

Petitioners,

Present:

- versus -

CARPIO, J., Chairperson,  
BRION,  
DEL CASTILLO,  
PEREZ, and  
PERLAS-BERNABE, JJ.

**MELANIA CAPARAS and  
SPOUSES RUEL and  
HERMENEGILDA  
PEREZ,**

Promulgated:

Respondents.

APR 15 2013 *[Signature]*

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**DECISION**

**BRION, J.:**

Under consideration is the petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court challenging the decision<sup>2</sup> dated August 7, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 67243. The CA affirmed the decision<sup>3</sup> dated February 19, 1998 of the Regional Trial Court (RTC) of Tagaytay City, Branch 18, in Civil Case No. TG-1541, dismissing the complaint for recovery of possession of a parcel of land filed by petitioners Ricardo Chu, Jr. and Dy Kok Eng against respondents Melania Caparas and spouses Ruel and Hermenegilda Perez.

<sup>1</sup> Rollo, pp. 8-26.

<sup>2</sup> Penned by Associate Justice Santiago Javier Ranada, and concurred in by Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino; id. at 31-38. The CA's November 8, 2006 resolution denied for lack of sufficient merit the petitioners' motion for reconsideration; id. at 40.

<sup>3</sup> Penned by Judge Alfonso S. Garcia; CA rollo, pp. 38-49.

*[Handwritten mark]*

### **The Factual Antecedents**

At the root of the case is a *parcel of land with an area of 26,151 square meters (subject property)* located at Maguyam, Silang, Cavite, originally owned and registered in the name of Miguela Reyes and covered by Tax Declaration (TD) No. 9529.<sup>4</sup>

On November 10, 1995, the petitioners filed a complaint to recover possession of the subject property<sup>5</sup> against the respondents, with a prayer to annul the sale of the subject property executed between the respondents. In the complaint, the petitioners alleged that they are the successors-in-interest of Miguela over the subject property, which Caparas held in trust for Miguela. The petitioners also averred that the subject property was erroneously included in the sale of land between the respondents.

The respondents failed to file an answer to the complaint and were declared in default. The RTC thus allowed the petitioners to present their evidence *ex parte* against the respondents.

The petitioners' evidence showed that the *subject property was previously part of the 51,151-square meter tract of land* owned by Miguela at Maguyam, Silang, Cavite. On July 5, 1975, Miguela *sold to Caparas 25,000 square meters of the eastern portion* of the 51,151-square meter tract of land. Miguela retained for herself the balance (or 26,151 square meters) of the subject property, located at the **western portion** of the original 51,151-square meter property. Further, the deed of conveyance executed between Miguela and Caparas, entitled "*Kasulatan ng Tuluyang Bilihan ng Lupa*,"<sup>6</sup> described the boundaries of the parcel of land purchased by Caparas as: "*sa ibaba ay Faustino Amparo, sa silangan ay Silang at Carmona boundary, sa ilaya ay Aquilino Ligaya, at sa kanluran ay ang natitirang lupa ni Miguela Reyes[.]*"<sup>7</sup>

The petitioners asserted that more than fourteen (14) years later, Caparas caused the preparation of a consolidated survey plan<sup>8</sup> (*Caparas survey plan*) under her name for several parcels of land (*consolidated parcels of land*) located at Silang-Carmona, Cavite, with a total land area of 40,697 square meters. Under the Caparas survey plan, the parcel of land supposedly retained by Miguela was erroneously transferred to the **eastern portion** of the original 51,151-square meter tract of land. As a result of the error, the subject property was included in the consolidated parcels of land owned by Caparas. The petitioners asserted that Caparas admitted the wrongful inclusion of the subject property owned by Miguela in the

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<sup>4</sup> *Rollo*, p. 32.

<sup>5</sup> Complaint dated September 15, 1995; records, pp. 1-6.

<sup>6</sup> *Id.* at 16-17.

<sup>7</sup> *Id.* at 16.

<sup>8</sup> Ccs-04-000872-D, Silang-Carmona, Cavite Cadastre No. 452-D; *rollo*, p. 32.

consolidated parcels of land through Caparas' "*Sinumpaang Salaysay ng Pagpapatotoo*"<sup>9</sup> dated August 27, 1990.

The petitioners also alleged that on November 8, 1991, Caparas sold to the spouses Perez the consolidated parcels of land in a deed entitled "*Kasulatan ng Bilihang Tuluyan.*" The petitioners claimed that included in the aforesaid sale was a parcel of land with boundary description similar to the 25,000-square meter parcel of land sold by Miguela to Caparas.

According to the petitioners, Miguela, on July 24, 1994, sold the subject property to the petitioners<sup>10</sup> for which they (the petitioners) secured a tax declaration (TD No. 22477-A).<sup>11</sup> Considering the alleged error in the Caparas survey plan, the petitioners demanded the reconveyance of the subject property from Caparas and the spouses Perez, who refused to reconvey the subject property.

After an *ex parte* hearing, the RTC ruled in the petitioners' favor.<sup>12</sup> The RTC, however, refused to approve, for lack of authority, the new survey plan for the subject property<sup>13</sup> that the petitioners submitted.

The spouses Perez filed a petition for relief from judgment<sup>14</sup> on the ground of excusable negligence. The spouses Perez averred that the parcel of land sold to the petitioners was not the subject property whose title had been confirmed in their (spouses Perez's) names.<sup>15</sup> In the alternative, the spouses Perez claimed that they bought the subject property in good faith and for value and had been in open, continuous, public and adverse possession of it since 1991.

### **The RTC Ruling**

On February 19, 1998, the RTC rendered a decision<sup>16</sup> setting aside its earlier decision, and dismissed the petitioners' complaint for lack of merit.

The RTC held that the petitioners had no sufficient cause of action for reconveyance and damages against the respondents. ***The RTC found that Chu admitted during cross-examination<sup>17</sup> that the parcel of land sold to them was different from the subject property.***

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<sup>9</sup> Records, pp. 20-21.

<sup>10</sup> Id. at 9-10.

<sup>11</sup> Id. at 7-8.

<sup>12</sup> Decision dated June 24, 1996.

<sup>13</sup> Records, pp. 44-45 and 134.

<sup>14</sup> Id. at 51-55.

<sup>15</sup> Judgment rendered by the RTC, Tagaytay City, Branch XVIII in LRC Case No. TG-429; id. at 61-62.

<sup>16</sup> *Supra* note 3.

<sup>17</sup> CA *rollo*, pp. 44-46.

The RTC also rejected the petitioners' claim that they were purchasers in good faith of the subject property considering that the spouses Perez's title over the consolidated parcels of land was registered. The RTC ruled that even granting that the subject property was included in the consolidated parcels of land sold to the spouses Perez, the petitioners were deemed to have knowledge of the spouses Perez's interest therein.

Finally, considering the petitioners' unfounded claims, the RTC ordered the petitioners to pay the spouses Perez moral and exemplary damages, attorney's fees and the costs of suit.

The petitioners appealed the RTC decision to the CA, assigning as errors the failure of the RTC: (1) to recognize that there was an encroachment when the subject property was included in the Caparas survey plan as part of the consolidated parcels of land owned by Caparas; and (2) to consider the petitioners' lack of malice or bad faith in filing the case against Caparas and the spouses Perez that would justify the award of damages and attorney's fees.<sup>18</sup>

### **The Ruling of the CA**

In its August 7, 2006 decision,<sup>19</sup> the CA dismissed the petitioners' appeal and affirmed the February 19, 1998 decision of the RTC. The CA declared that the petitioners' resort to the court was premature since there was no proof that the Bureau of Lands revoked its approval of the Caparas survey plan. In any event, the CA declared that Chu's admission and the existing and duly approved Caparas survey plan belied their claim of encroachment in the petitioners' property by the spouses Perez.

The CA also affirmed the RTC's finding that the petitioners were presumed to have knowledge of the spouses Perez's registered title over the subject property.

Finally, the CA upheld the RTC's refusal to approve, for lack of authority, the new survey plan that the petitioners submitted and also upheld the award of damages, attorney's fees, and costs. The CA's denial of the petitioner's motion for reconsideration<sup>20</sup> prompted the present recourse.

### **The Petition**

The petitioners impute serious error and grave abuse of discretion on the findings of the CA that: *first*, there was no encroachment made by the

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<sup>18</sup> Id. at 26-36.

<sup>19</sup> *Supra* note 2.

<sup>20</sup> Dated August 28, 2006; *rollo*, pp. 81-90.

spouses Perez in the petitioners' property; *second*, the filing of the petitioners' complaint was premature; and *third*, the petitioners are liable for moral and exemplary damages and attorney's fees.<sup>21</sup>

The petitioners insist that the CA misunderstood the term "encroachment." They argue that this case **involves technical encroachment and not mere physical encroachment**. There was technical encroachment due to the mistake in the Caparas survey plan that included the subject property as among the consolidated parcels of land owned by Caparas.

The petitioners explained that the "*Kasulatan ng Tuluyang Bilihan ng Lupa*,"<sup>22</sup> between Miguela and Caparas, referred to a parcel of land located at the **eastern portion** of the original 51,151-square meter tract of land. Under the Caparas survey plan however, the parcel of land retained by Miguela (and thereafter sold to the petitioners) became the parcel of land located at the **eastern portion** of the 51,151-square meter tract of land (designated as Lot No. 3); the portion on the **west** of the 51,151-square meter tract of land (the subject property) was designated as Lot No. 1 and was included in Caparas' consolidated parcels of land sold to the spouses Perez.

Similarly, the petitioners assert that the CA also disregarded the evidence of Caparas' "*Sinumpaang Salaysay ng Pagpapatotoo*"<sup>23</sup> on Miguela's ownership of the subject property and Caparas' admission that she was merely a trustee thereof. The petitioners also assert that the CA should have also considered that the spouses Perez, as Caparas' successors-in-interest, are also trustees in the subject property.

Finally, the petitioners insist that the award of damages and attorney's fees to the spouses Perez was improper since they own the subject property.

### **The Case for the Respondents**

The spouses Perez, relying on the rulings of the RTC and of the CA, maintain<sup>24</sup> that: (1) the petitioners' resort to the court was premature as they failed to prove their claim of encroachment; (2) the petitioners cannot be deemed purchasers in good faith over the subject property; and (3) the RTC has no authority to approve or cancel survey plans.

The spouses Perez also assert that the petition does not raise any issue of law but only questions of facts not proper for a Rule 45 petition. They

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<sup>21</sup> Id. at 18-26.

<sup>22</sup> See note 6.

<sup>23</sup> See note 9.

<sup>24</sup> Comment dated March 20, 2007; *rollo*, pp. 92-95. The arguments were essentially reiterated in their Memorandum dated October 9, 2007; *rollo*, pp. 104-111.

submit that the factual findings of the CA, duly passed upon, are binding and conclusive on this Court, and the alleged technical encroachment, which the petitioners insist as the real issue obtaining in this case, is better addressed to the appropriate administrative authorities. Caparas did not file her comment and memorandum.

### **The Issue**

In sum, the **core issue** for determination is: *whether the parcel of land sold to the petitioners is the subject property included in the consolidated parcels of land sold to the spouses Perez.*

### **The Court's Ruling**

**We affirm the decision and the resolution of the CA.**

#### ***Preliminary considerations***

At the outset, we find that the resolution of the petition necessarily requires the re-evaluation of the factual findings of the RTC and of the CA. Essentially, what the petitioners seek in this petition is a relief from the Court on the issue of encroachment, as well as the issues of prematurity and propriety of the award of damages that are intertwined with the issue of encroachment. On this point alone, the petition must fail, as a Rule 45 petition bars us from the consideration of factual issues.

Repeatedly, this Court has ruled that a petition for review on *certiorari* under Rule 45 of the Rules of Court shall raise only questions of law and not questions of facts. “A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.”<sup>25</sup> The question, to be one of law, must rest solely on what the law provides on the given set of circumstances and should avoid the scrutiny of the probative value of the parties’ evidence.<sup>26</sup> Once the issue invites a review of the factual findings of the RTC and of the CA, as in this case, the question posed is one of fact that is proscribed in a Rule 45 petition.<sup>27</sup>

The Court’s jurisdiction under a Rule 45 review is limited to reviewing perceived errors of law, which the lower courts may have

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<sup>25</sup> *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012, 665 SCRA 38, 46. See also *Republic v. De Guzman*, G.R. No. 175021, June 15, 2011, 652 SCRA 101, 113; and *Heirs of Nicolas S. Cabigas v. Limbaco*, G.R. No. 175291, July 27, 2011, 654 SCRA 643, 651-652. (All citations omitted.)

<sup>26</sup> *Lorzano v. Tabayag, Jr.*, *supra*, at 46-47; *Republic v. De Guzman*, *supra*, at 113-114; and *Heirs of Pacencia Racaza v. Abay-abay*, G.R. No. 198402, June 13, 2012, 672 SCRA 622, 628. (All citations omitted.)

<sup>27</sup> *Lorzano v. Tabayag, Jr.*, *supra*, at 47.

committed.<sup>28</sup> The resolution of factual issues is the function of the lower courts whose findings, when aptly supported by evidence, bind this Court. This is especially true when the CA affirms the lower court's findings,<sup>29</sup> as in this case. While this Court, under established exceptional circumstances, had deviated from the above rule, we do not find this case to be under any of the exceptions.

Nevertheless, we still affirm the assailed CA rulings even if we were to disregard these established doctrinal rules.

***On the issue of encroachment and prematurity of the action***

A review of the records from the RTC and the CA reveals that both arrived at the same factual consideration – there was no encroachment. We agree with this factual finding for the following reasons:

***First***, the records undoubtedly established that the subject property was not the parcel of land that the petitioners purchased from Miguela. We note that the ***Caparas survey plan was used in identifying the property purchased by the petitioners from Miguela***. The deed of sale between them showed what the petitioners purchased from Miguela referred to another parcel of land designated as Lot No. 3 in the Caparas survey plan, while the subject property was designated as Lot No. 1 of the same plan. ***Significantly, Chu also admitted that the parcel of land they purchased from Miguela was different from the subject property.***

The following pieces of evidence adduced *by the petitioners* also support the above conclusion:

1. The contents in the Deed of Absolute Sale between Miguela and the petitioners,<sup>30</sup> dated July 24, 1994, which described the parcel of land sold by Miguela to the petitioners as **Lot No. 3, per Ccs-04-000872-D and covered by TD No. 22312-A;**

2. The tax declaration (TD No. 22312-A)<sup>31</sup> **under Miguela's name** for the year 1996 involving **Lot No. 3 Ccs-04-000872-D**, with boundary description as NE- creek, NW- creek, SE- Lot No. 10565, and SW- Lot. No. 1;

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<sup>28</sup> *Sps. Crisanto Alcazar and Susana Villamayor v. Evelyn Arante*, G.R. No. 177042, December 10, 2012; and *Heirs of Pacencia Racaza v. Abay-abay*, *supra* note 25, at 627.

<sup>29</sup> *Land Bank of the Philippines v. Barbara Sampaga Poblete*, G.R. No. 196577, February 25, 2013; and *Eterton Multi-Resources Corporation v. Filipino Pipe and Foundry Corporation*, G.R. No. 179812, July 6, 2010, 624 SCRA 148, 154.

<sup>30</sup> Records, pp. 9-10.

<sup>31</sup> *Id.* at 35.

3. The tax declaration (TD No. 22477-A)<sup>32</sup> under the petitioners' name for the year 1996, which cancelled TD No. 22312, likewise covering Lot No. 3, Ccs-04-000872-D with the same boundary description as stated in the cancelled TD.

In contrast with these pieces of evidence, the spouses Perez's Original Certificate of Title No. P-3123<sup>33</sup> covering the subject property and their actual occupation of this property since 1991 duly established their ownership of this property. Clearly then, there was no encroachment by the spouses Perez since they were the owners of the subject property. There was also no evidence to prove that the spouses Perez encroached on the parcel of land (Lot No. 3) belonging to the petitioners.

Second, contrary to the petitioners' assertion, what Caparas admitted in the "*Sinumpaang Salaysay ng Pagpapatotoo*" was the erroneous inclusion of **Lot No. 3** in the Caparas survey plan and its implication that Lot No. 3 belonged to Caparas. It was for this reason that Caparas acknowledged Miguela's ownership of Lot No. 3.

### *On the Action for reconveyance*

In light of the above, the petitioners' action against Caparas and the spouses Perez for reconveyance, based on trust, must fail for lack of basis. An action for reconveyance is a legal and equitable remedy that seeks to transfer or reconvey property, wrongfully registered in another person's name, to its rightful owner.<sup>34</sup> To warrant reconveyance of the land, the plaintiff must allege and prove, among others,<sup>35</sup> ownership of the land in dispute and the defendant's erroneous, fraudulent or wrongful registration of the property.<sup>36</sup>

In the present petition, the petitioners failed to prove that the parcel of land they owned was the subject property. Logically, there is nothing to reconvey as what the spouses Perez registered in their names did not include the parcel of land which the petitioners, by their evidence, own.

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<sup>32</sup> Id. at 7-8.

<sup>33</sup> Id. at 152-153.

<sup>34</sup> *Leoveras v. Valdez*, G.R. No. 169985, June 15, 2011, 652 SCRA 61, 71; and *Guizano v. Veneracion*, G.R. No. 191128, September 12, 2012, 680 SCRA 519, 526. (Citations omitted.)

<sup>35</sup> See *New Regent Sources, Inc. v. Tanjuatco, Jr.*, G.R. No. 168800, April 16, 2009, 585 SCRA 329, 336-337, which enumerated the other requisites that must concur for an action for reconveyance to prosper: "(1) the action must be brought in the name of a person claiming ownership or dominical right over the land registered in the name of the defendant; (2) the registration of the land in the name of the defendant was procured through fraud or other illegal means; (3) the property has not yet passed to an innocent purchaser for value; and (4) the action is filed after the certificate of title had already become final and incontrovertible but within four years from the discovery of the fraud or not later than 10 years in the case of an implied trust. (Citations omitted.)

<sup>36</sup> *Leoveras v. Valdez*, *supra* note 33, at 71.



We also see no trust, express or implied, created between the petitioners and the spouses Perez over the subject property. A trust by operation of law is the right to the beneficial enjoyment of a property whose legal title is vested in another.<sup>37</sup> A trust presumes the existence of a conflict involving one and the same property between two parties, one having the rightful ownership and the other holding the legal title. There is no trust created when the property owned by one party is separate and distinct from that which has been registered in another's name.

In this case, the Caparas survey plan and the deed of sale between the petitioners and Miguela showed that **the parcel of land** sold to the petitioners is distinct from the consolidated parcels of land sold by Caparas to the spouses Perez.

Although we are aware of an apparent discrepancy between the boundary description of the parcel of land described in the "*Kasulatan ng Tuluyang Bilihan ng Lupa*" executed between Caparas and Miguela, the "*Kasulatan ng Tuluyang Bilihan ng Lupa*" executed between Caparas and the spouses Perez, and Caparas' TD on the one hand, and the boundary description of the consolidated parcels of land stated in the Caparas survey plan and the spouses Perez's title on the other hand, we find the discrepancy more imagined than real. This perceived discrepancy does not help the petitioners' cause *in light of the evidence that the deed of sale between the petitioners and Miguela used the Caparas survey plan that clearly identified the parcel of land sold to them was different from the subject property.*

Even granting that the Caparas survey plan did erroneously switch the positions of the petitioners' and the spouses Perez's respective landholdings, we agree with the RTC that reconveyance was still an inappropriate remedy. The petitioners' recourse should have been to file the proper action before the Department of Environment and Natural Resources-Land Management Bureau for the cancellation of the Caparas survey plan and for the approval of a new survey plan<sup>38</sup> that correctly reflects the position of their respective landholdings. For until the Caparas survey plan has been cancelled, the petitioners' claim of encroachment has no basis.

Another perspective, too, that must be considered is Miguela's act in selling to the petitioners Lot No. 3 using the Caparas survey plan, which can be regarded as a ratification of any perceived error under the circumstances.

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<sup>37</sup> *Philippine National Bank v. Aznar*, G.R. Nos. 171805 and 172021, May 30, 2011, 649 SCRA 214, 230; and *Estate of Margarita D. Cabacungan v. Laigo*, G.R. No. 175073, August 15, 2011, 655 SCRA 366, 376. (Citations omitted.)

<sup>38</sup> See *Carpo v. Ayala Land, Incorporated*, G.R. No. 166577, February 3, 2010, 611 SCRA 436, 452-453. See also Section 4(15), Chapter 1, Title XIV of Executive Order No. 297 or the Administrative Code of 1987.

*On the propriety of the award of damages and attorney’s fees*

Based on the above discussion, we find the award of damages and attorney’s fees in the spouses Perez’s favor proper.

**First**, assuming that Miguela sold to the petitioners the subject property, the petitioners cannot be deemed to be purchasers in good faith. To be deemed a purchaser in good faith, there must be absence of notice that some other person has a right to or interest in such property.<sup>39</sup> The established facts show that the spouses Perez had been in possession of the subject property since 1991, while the petitioners purchased the subject property only on July 24, 1994. Had the petitioners actually verified the status of the subject property before they purchased it, they would have known of the spouses Perez’s interest therein. More importantly, the land registration court has confirmed the spouses Perez’s title over the subject property on March 1, 1994 or months prior to the petitioners’ purchase. As the RTC and the CA correctly ruled, the petitioners were deemed to have been placed on constructive notice of the spouses Perez’s title since the registration proceedings are *in rem*.<sup>40</sup>

**Second**, the petitioners undoubtedly filed and pursued an unfounded claim against the spouses Perez, for which the latter incurred unnecessary expenses to protect their interests. To repeat, the petitioners’ action for reconveyance against the spouses Perez completely had no basis.

**Finally**, the RTC correctly ruled that the petitioners are liable to pay moral and exemplary damages, attorney’s fees and the costs of suit, pursuant to Article 2217 in relation to Article 2219,<sup>41</sup> Article 2229<sup>42</sup> and Article

<sup>39</sup> See *Heirs of Nicolas S. Cabigas v. Limbaco*, *supra* note 24, at 656. (Citation omitted.)  
<sup>40</sup> *Ting v. Heirs of Diego Lirio*, G.R. No. 168913, March 14, 2007, 518 SCRA 334, 338; *De La Cruz v. Court of Appeals*, 458 Phil. 929, 941 (2003). See Section 31 of Presidential Decree No. 1529 provides in part:

“Section 31. *Decree of Registration.* – x x x

The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law. It shall be **conclusive upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice**, the same being included in the general description ‘To all whom it may concern.’” (emphasis ours; italics supplied)

<sup>41</sup> Articles 2217 and 2219 of the Civil Code provide:

“Art. 2217. Moral 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 for omission.”

“Art. 2219. Moral damages may be recovered in the following and analogous cases:

x x x x

**(8) Malicious prosecution;**

x x x x

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.” (emphasis ours)

2208<sup>42</sup> of the Civil Code. As the RTC correctly observed, Chu was a lawyer and a businessman. He and his co-petitioner were expected to exercise more prudence in their transactions before instituting a clearly unfounded action against innocent third persons on the premise that they committed a mistake for which they themselves are to blame.

**WHEREFORE**, in view of these considerations, we hereby **DENY** the petition and accordingly **AFFIRM** the decision dated August 7, 2006 and the resolution dated November 8, 2006 of the Court of Appeals in CA-G.R. CV No. 67243. Costs against the petitioners.

**SO ORDERED.**



**ARTURO D. BRION**

Associate Justice

**WE CONCUR:**



**ANTONIO T. CARPIO**

Associate Justice



**MARIANO C. DEL CASTILLO**

Associate Justice



**JOSE PORTUGAL PEREZ**

Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice

<sup>42</sup> Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damage:

<sup>43</sup> 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;

x x x x

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

x x x x

(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. [emphasis ours]

**ATTESTATION**

I attest 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.

**ANTONIO T. CARPIO**

Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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