Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DEMETRIA DE GUZMAN, AS SUBSTITUTED BY HER HEIRS OLGA C. BARBASO AND NOLI G. CEMENTINA;* **LOLITA A. DE GUZMAN; ESTHER G. MILAN; BANAAG A. DE GUZMAN; AMOR G. APOLO, AS SUBSTITUTED BY HIS HEIRS ALBERTO T. APOLO, MARK APOLO AND GEORGE APOLO;* HERMINIO A. DE GUZMAN; LEONOR G. VIVENCIO; NORMA A. DE GUZMAN; and JOSEFINA G. HERNANDEZ,** *Petitioners,*	**G.R. No. 191710**
- versus -	Present: CARPIO, *Chairperson,* VELASCO, JR.,** DEL CASTILLO, MENDOZA, *and* LEONEN, *JJ.*
FILINVEST DEVELOPMENT CORPORATION, *Respondent.*	Promulgated: 14 JAN 2015

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DECISION

DEL CASTILLO, *J.*:

In this Petition for Review on *Certiorari,*[1] petitioners question the extent of the easement of right of way granted to them and the indemnity for the same as fixed by the Court of Appeals (CA) in its September 25, 2009 Decision[2] and March 1, 2010 Resolution[3] in CA-G.R. CV No. 87920.

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* See Notice of Death of Client, Records, Vol. I, pp. 153-157.

** Per Special Order No. 1910 dated January 12, 2015.

1 *Rollo*, pp. 8-17.

2 CA *rollo*, pp. 91-101; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Mario L. Guariña III and Jane Aurora C. Lantion.

3 Id. at 137-138.

Factual Antecedents

Petitioners Demetria de Guzman, Lolita A. de Guzman, Esther G. Milan, Banaag A. de Guzman, Amor G. Apolo, Herminio A. de Guzman, Leonor G. Vivencio, Norma A. de Guzman and Josefina G. Hernandez (petitioners)[4] were co-owners in fee simple of a parcel of land measuring 15,063 square meters and situated in Barrio Bulao, Cainta, Rizal, which was later subdivided among them and for which individual titles were issued. The property is enclosed and surrounded by other real properties belonging to various owners. One of its adjoining properties is Filinvest Home Subdivision Phase IV-A, a subdivision owned and developed by respondent Filinvest Development Corporation (respondent) which, coming from petitioners' property, has a potential direct access to Marcos highway either by foot or vehicle. As such, petitioners filed on August 17, 1988 a Complaint for Easement of Right of Way[5] against respondent before the Regional Trial Court (RTC) of Antipolo.

Unwilling to grant petitioners a right of way within its subdivision, respondent alleged in its Answer that petitioners have an access to Sumulong Highway through another property adjoining the latter's property. In fact, the distance from petitioners' property to Sumulong Highway using the said other property is only 1,500 meters or shorter as compared to the 2,500-meter distance between petitioners' property and Marcos Highway using respondent's subdivision.[6]

On April 30, 1993, the RTC rendered a Decision[7] granting petitioners the right of way across respondent's subdivision, ratiocinating as follows:

> The Court holds that a right of way as prayed in the complaint can be granted.

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4 Only petitioner Demetria de Guzman's name, also known as Demetria G. Cementina, appears in this petition. It was entitled "*Demetria de Guzman, **et. al.** v. Court of Appeals and Filinvest Development Corp*." A perusal of the records would, however, reveal the names of the other petitioners.

It must be noted that Demetria de Guzman has already died and is represented by her heir, daughter Olga C. Barbaso, who was the only one who executed and signed the Verification and Certification Against Forum-Shopping in this petition.

Although the certification against forum-shopping was not signed by all of herein petitioners, we shall allow the petition in accordance with our ruling in *Heirs of Domingo Hernandez, Sr. v. Mingoa Sr*., G.R. No.146548, December 18, 2009, 608 SCRA 394, 406-407, where we held:

> Here, all the petitioners are immediate relatives who share a common interest in the land sought to be reconveyed and a common cause of action raising the same arguments in support thereof. There was sufficient basis, therefore, for Domingo Hernandez, Jr. to speak for and in behalf of his co-petitioners when he certified that they had not filed any action or claim in another court or tribunal involving the same issues. Thus, the Verification/Certification that Hernandez Jr. executed constitutes substantial compliance under the Rules.

This Court also accorded the same leniency in the earlier case of *Cavile v. Heirs of Cavile*, 448 Phil. 302, 311 (2003), as the lone petitioner who executed the certification of non-forum shopping was a relative and co-owner of the other petitioners with whom he shares a common interest.

5 Records, Vol. I, pp. 1-5. The case was docketed as Civil Case No. 1236-A and raffled to Branch 72.

6 See RTC's April 30, 1993 Decision, id. at 97-101.

7 Id.; penned by Executive Judge Rogelio L. Angeles.

> The adverted route by [respondent] is unfeasible and unavailing. The route, aside from being hilly, has to traverse raw lands [denominated] 3043-A which belong to different owners with no designated road lot thus the impossibility of free access thereon. Aside from that fact it is not passable by vehicular means.
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> Whereas if [petitioners] would pass through the [respondent's] road lot particularly Lot 15 access to the Marcos Highway is readily available to [petitioners'] property. Only a fence [separates] the Filinvest Subdivision and the [petitioners'] property [which] could be removed x x x anytime.
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> While in the survey of the property of the [petitioners] it is shown that the distance from the subject lot to the Marcos Highway is approximately 2,350 meters and the distance from Sumulong Highway to the subject lot is 1,400 meters, such short distance could not be used as absolute basis to deny the [petitioners] the relief prayed for.
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> As held in Bacolod-Murcia Milling Co. vs. Capitol Subd., Inc., L-25887, July 26, 1966 and by express provision of [A]rticles 649 and 650 of the Civil Code, a compulsory right of way cannot be obtained unless four requisites are first shown to exist, namely: (1) that it is surrounded by other immovables and has no adequate outlet to a public highway; (2) that there is payment of proper indemnity; (3) that the isolation is not due to the dominant estate's own acts; and (4) that the right of way claimed is at the point least prejudicial to the servient estate and in so far as consistent with this rule where the distance from the dominant estate to a public highway may be the shortest.
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> The foregoing requirements are present in this case.
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> As already stated even if it appears that the distance from the subject property to Sumulong Highway is the shortest route, yet it is prejudicial to the [petitioners].
>
> The road in said route is undeveloped, owned by several owners, a raw lot, hilly, while if it would be [respondent's] property which would be the [servient] estate it only takes the removal of the fence in order that [petitioners] could have access to the public highway.[8]

As to the indemnity, the RTC said:

> Lastly, as a requirement for the granting of the easement indemnity is hereby placed at ₱400,000.00 considering x x x the benefits derived by the dominant estate and the type of the road therein which is concrete.[9]

Upon respondent's appeal, the CA, in its February 13, 1996 Decision,[10] affirmed petitioners' entitlement to legal easement of right of way. However, it set aside the ₱400,000.00 indemnity fixed by the RTC considering that the exact area

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8 Id. at 100.

9 Id. at 101.

10 Id. at 107-121; penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justices Arturo B. Buena and Consuelo Ynares-Santiago (all of whom became members of this Court).

of the right of way, as well as its value per square meter, had not yet been determined. The CA thus remanded the case to the RTC for the determination thereof and the corresponding amount of indemnity.

As none of the parties appealed the said CA Decision, the same became final and executory.

Ruling of the Regional Trial Court

Established during the remand proceedings was the fair market value of respondent's property which was pegged by the Municipal Assessor's Office of Cainta at ₱1,620.00 per square meter. Anent the extent of the property affected by the right of way granted by virtue of the April 30, 1993 RTC Decision as affirmed by the CA, the parties were, however, in disagreement, *viz*:

> [Counsel for Petitioners]
> Atty. Barbaso: x x x But if we are going to [take it from] this affirmed decision of the trial court[,] it made [particular] mention of x x x Road Lot 15 access as found in page 4 of the said decision and the said decision also mentioned about a statement and [I] quote x x x: "and it only takes the removal of the fence in order [that] the [petitioners] could have access on the highway.["] So, this is [the] decision. I am quoting it from the decision. So if the decision says it [would] only take the removal of the fence, [it is only] the fence that we are going to remove. It's found on page 4 of the decision of the lower court.
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> [Counsel for Respondent]
> Atty. Tolentino: [Ma'am], may I?
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> Atty. Barbaso: There is no other decision. This is the only decision we are referring to[. It is] one and the same decision.
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> Court: Decision of the Court of Appeals.
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> Atty. Tolentino: Court of Appeals decision, page 12, states[: "]regrettably the lower court did not adequately explain the basis for fixing the indemnity at ₱400,000.00. There was no finding as to the exact measurement of the right of way, its area in square meters, its value by square meters, the cost of the construction.["] So…
>
> x x x x
>
> Atty. Tolentino: Where the easement is established in such a manner that its use may be continuous by the dominant [e]state [by] establishing a permanent passage[,] the indemnity will

	consist [of] the value of the land occupied and the amount of damage.
Atty. Barbaso:	We are not occupying the whole of the entrance up to this very point [Road Lot 15].
Atty. Tolentino:	But you cannot reach this point [Road Lot 15] if you don't pass the entrance.
Atty. Barbaso:	Only passing that's why the servitude was granted. That's why the easement was granted.
Atty. Tolentino:	We will submit, your honor, whatever ruling you make.
Atty. Barbaso:	Your honor…
Court:	The claim of [respondent] is from the gate up to here [Road Lot 15].
Atty. Tolentino:	Yes, your honor.
Court:	[To Atty. Barbaso] And your claim is from that portion to here [from petitioners' property to Road Lot 15].
x x x x	
Court:	Do it in writing including the jurisprudence in support of your respective claim[s].[11]

As can be gleaned from the above, petitioners insisted that the right of way pertains only to Road Lot 15 where the fence separating their property from respondent's subdivision, which was supposed to be removed to grant them access thereto, is located. On the other hand, it was respondent's contention that the right of way covers the whole stretch from petitioners' property all the way to its subdivision's gate leading to Marcos Highway.

In resolving the same in its Order[12] of June 1, 2005, the RTC deduced, from the April 30, 1993 RTC Decision and the February 13, 1996 CA Decision, that the right of way granted pertains only to Road Lot 15, *viz*:

> Based on the records of the case, the Decision of this Court and that of the Court of Appeals are pointing to Road Lot 15 as the subject lot of the right of way granted to the [petitioners]. The said Decisions had long attained finality with respect to the subject lot which should be the basis for the determination of just compensation.[13]

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11 TSN of the Ocular Inspection on February 27, 2004, pp. 281-287.
12 Records, pp. 335-337.
13 Id. at 337

Hence, it ruled:

> In view of the foregoing, the Court so holds that the appropriate amount of indemnity due to the [respondents] from the [petitioners] for the right of way granted to the latter shall be assessed at One Thousand Six Hundred Twenty Pesos (₱1,620.00) per square meter of Road Lot 15 which consists of 264 square meters and the [petitioners] to contribute proportionately to the costs of the construction of the right of way on Road Lot 15 to be determined by both parties.
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> SO ORDERED.[14]

Ruling of the Court of Appeals

Aggrieved, respondent appealed the said Order to the CA. It contended that under Articles 649[15] and 650[16] of the Civil Code, the measurement of the land comprising a right of way should be the distance of the dominant estate to the public highway. Thus, respondent argued that the right of way should not pertain only to Road Lot 15 as held by the RTC, but should also include Road Lots 3, 10, 6, 4, 2 and 1 which petitioners would likewise use or traverse before they could reach Marcos Highway. It thus contended that the total area to be indemnified is 23,500 square meters and not the mere 264-square meter area of Road Lot 15. Respondent likewise insisted that petitioners should also share in the costs of the construction and maintenance of these road lots.

The CA agreed with respondent and granted the appeal through its Decision[17] of September 25, 2009. It held that the RTC erred in concluding that the right of way pertains only to Road Lot 15. It gathered from the April 30, 1993 RTC Decision that what was actually granted to petitioners as a right of way from their property all the way to Marcos Highway had an approximate distance of 2,350 meters. This fact was not disputed by petitioners when they appealed the said RTC Decision. And as per evidence, such distance of 2,350 meters covers not only Road Lot 15 but also Road Lots 3, 10, 6, 4, 2, and 1. Hence, the proper

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14 Id.

15 Article 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such encumbrance.

The easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

16 Art. 650. The easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

17 CA *rollo*, pp. 91-101.

indemnity, per the case of *Woodridge School, Inc. v. ARB Construction Co., Inc.,*[18] should consist of the value of the entire stretch of the right of way, which measures 2,350 meters in length and 10 meters in width or of a total area of 23,500 square meters at a price of ₱1,620.00 a square meter, plus damages caused to the servient estate.

As regards the amount of damages, the appellate court held that petitioners cannot be held liable for the cost of the construction of the road lots as they are already existing road lots in respondent's subdivision. Neither is there a need for the construction of new road lots. What it would take for petitioners to have access to Marcos Highway is merely the removal of a fence that separates their property from respondent's subdivision. At the most, the only damage that petitioners may cause in the establishment of the right of way is the wear and tear of the affected road lots.

Thus, the dispositive portion of the CA's Decision:

> WHEREFORE, premises considered, the Order dated 1 June 2005 issued by the Regional Trial Court of Antipolo City, Branch 72, is MODIFIED. Plaintiffs-appellees are ordered to pay defendant-appellant the proper amount of indemnity for the legal easement of right of way consisting of (1) the value of the road lots affected, which has an area of 23,500 square meters assessed at ₱1,620.00 per square meter and (2) the contribution to be made by plaintiffs-appellees in the maintenance of said road lots, to be determined by both parties.
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> SO ORDERED.[19]

Petitioners moved for reconsideration.[20] The CA, however, denied the same in its March 1, 2010 Resolution[21] for having been filed out of time.

Hence, this Petition.

Issues

The essential questions to be answered in this Petition are the following: (1) What is the extent of the right of way granted to petitioners under the April 30, 1993 RTC Decision as affirmed by the CA in its February 13, 1996 Decision? (2) Assuming that the subject right of way pertains to the road network in respondent's subdivision, is the CA correct in its assessment of indemnity?

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18 545 Phil. 83, 91 (2007).
19 Id. at 100-101.
20 See Motion for Reconsideration with Manifestation, id. at 102-108.
21 Id. at 137-138.

Our Ruling

There is partial merit in the Petition.

The liberality rule must be observed in this case.

The Court notes the attendance of some procedural issues in this case which it deems proper to first pass upon.

The Petition is denominated as a petition for *certiorari*. However, under the subheading "*IV. BRIEF STATEMENT OF MATTERS INVOLVED*" of the Petition, it was alleged that:

> This is an action brought by the plaintiffs-petitioners pursuant to **Rule 45 of the Rules of Court** against the **assailed decision and resolution of the Court of Appeals** which are both **not in accord with law** as will be shown in the discussion hereinafter.[22] (Emphases supplied)

The main issue then assigned for resolution is whether the CA was correct in ruling that the property subject of the right of way pertains not only to Road Lot 15 but to the whole stretch of road network commencing from Road Lot 15, then passing through Road Lots 3, 10, 6, 4, 2 and 1, all the way to Marcos Highway. The Court notes that this matter is a proper allegation found in a petition for review on *certiorari* under Rule 45[23] of the Rules of Court.

Yet, in petitioners' Prefatory Statement, they anchor their Petition on the alleged grave abuse of discretion committed by the CA. Thus:

> Plaintiffs-petitioners are **left with no appeal, nor is there any plain, speedy, and adequate remedy in the ordinary course of law** after the respondent Court of Appeals incorrectly den[ied] their motion for reconsideration[24] x x x
>
> Respondent Court of Appeals **gravely abused its discretion amounting to lack of jurisdiction** not only in reversing a final ruling of the trial Court, but also on the award of indemnity x x x.[25]

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22 *Rollo*, p. 12.

23 The issue on the total area of the subject property is actually a question of fact. However, questions of fact may be raised in a petition for review under Rule 45 whenever the CA's factual findings are contrary to those of the trial court (*Legal Heirs of the Late Edwin B. Deauna v. Fil-Star Maritime Corporation*, G.R. No. 191563, June 20, 2012, 674 SCRA 284, 302).

24 *Rollo*, pp. 8-9.

25 Id. at 10.

Then in their Arguments/Discussion, petitioners alleged that:

> The Court of Appeals **whimsically and capriciously** reversed the final ruling of the Regional Trial Court, Branch 72, Antipolo City x x x.[26] (Emphasis supplied)

Furthermore, petitioners impleaded the appellate court as public respondent. These, on the other hand, are salient features of a petition for *certiorari* under Rule 65.

In the case of *Bicol Agro-Industrial Producers Cooperative, Inc. (BAPCI) v. Obias*,[27] citing *Active Realty and Development Corporation v. Fernandez*,[28] the Court revisited the difference between a petition for review on *certiorari* (under Rule 45) and a petition for *certiorari* (under Rule 65), to wit:

> A petition for *certiorari* under Rule 65 is proper to correct errors of jurisdiction committed by the lower court, or grave abuse of discretion which is tantamount to lack of jurisdiction. This remedy can be availed of when "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law."
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> Appeal by *certiorari* under Rule 45 of the Rules of Court, on the other hand, is a mode of appeal available to a party desiring to raise only questions of law from a judgment or final order or resolution of the Court of Appeals, the *Sandiganbayan*, the Regional Trial Court or other courts whenever authorized by law.
>
> x x x The general rule is that the remedy to obtain reversal or modification of judgment on the merits is appeal. Thus, the proper remedy for the petitioner should have been a petition for review on *certiorari* under Rule 45 of the Rules of Court since the decision sought to be reversed is that of the CA. The existence and availability of the right of appeal proscribes a resort to *certiorari*, because one of the requisites for availment of the latter is precisely that "there should be no appeal. The remedy of appeal under Rule 45 of the Rules of Court was still available to the petitioner.[29]

It likewise stated in *Bicol Agro-Industrial Producers Cooperative, Inc. (BAPCI)* that:

> Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceeding involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.

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26 Id. at 12.
27 618 Phil. 170 (2009).
28 562 Phil. 707, 718-719 (2007).
29 *Bicol Agro-Industrial Producers Cooperative Inc. (BAPCI) v. Obias*, supra note 27 at 185.

> Moreover, it is basic that one cannot avail of the remedy provided for under Rule 65 when an appeal is still available. x x x [30]

Sifting through the issues and other matters raised in the present petition, it becomes apparent that the crucial question calling for this Court's Resolution pertains to the CA's appreciation of the issue and evidence presented by the parties, and not the alleged grave abuse of discretion committed by the appellate court in rendering its Decision. Therefore, the issue in the present controversy clearly falls under the classification of errors of fact and law – questions which may be passed upon by this Court only *via* a petition for review on *certiorari* under Rule 45. Albeit it must be made clear that questions of fact may only be reviewed by this Court under exceptional circumstances like when the findings of facts of the CA are at variance with those of the trial court,[31] as in this case.

While the Court agrees with respondent's observation that based on the allegations, issues and other matters contained in the Petition, there seems to be a general confusion on the part of petitioners' counsel in ascertaining which remedy is more appropriate under the given circumstances, it shall nevertheless treat the petition as one filed under Rule 45, especially since it was filed well within the reglementary period provided under the said rule.[32] It was held in *Sanchez v. Court of Appeals*:[33]

> The Rules of Court should be liberally construed in order to promote their object of securing a just, speedy and inexpensive disposition of every action or proceeding.
>
> The rules of procedure should be viewed as mere tools designed to aid the courts in the speedy, just and inexpensive determination of the cases before them. Liberal construction of the rules and the pleadings is the controlling principle to effect substantial justice. Litigations should, as much as possible, be decided on their merits and not on mere technicalities.[34]

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30 Id. at 185-186.

31 As stated under footnote 21, citing *Legal Heirs of the Late Edwin B. Deauna v. Fil-Star Maritime Corporation*, at 302, questions of fact may be raised in a petition for review under Rule 45 whenever the CA's factual findings are contrary to those of the trial court.

32 In *Bicol Agro-Industrial Producers Cooperative Inc. (BAPCI) v. Obias*, supra note 27 at 186, we likewise considered the petition therein to have been filed under Rule 45 as it was filed on time pursuant to said rule, among other considerations.

Here, the Notice of Resolution of the CA, promulgated on March 1, 2010, was received by petitioners on March 4, 2010. They filed a motion for extension of time to file a petition for review on certiorari in this Court on March 19, 2010, asking for an extension of thirty (30) days within which to file the petition. The motion was granted. Thus, petitioners had until April 18, 2010 to file their petition. However, since April 18, 2010 fell on a Sunday, petitioners had until April 19, 2010, the date of filing of herein petition, to file the same.

33 452 Phil. 665 (2003).

34 Id. at 673.

Besides and as already mentioned, the conflicting findings of fact and conclusions arrived at by the RTC and CA,[35] as well as the fact that this case has been awaiting resolution for close to three decades now, are ample reasons for this Court to rule on the issues raised herein without much resort to technicalities.

Finally, we note that in its March 1, 2010 Resolution, the CA denied petitioners' motion for reconsideration for having been filed out of time. According to the CA, petitioners had until October 21, 2009 within which to file their motion for reconsideration; yet, they filed the same on October 22, 2009.

We do not concur with the CA on this matter. We perused the records of the case and find that the petitioners timely filed their motion for reconsideration. In the envelop attached to the dorsal portion of petitioners' transmittal letter,[36] it was shown that petitioners filed by registered mail their motion for reconsideration on October 21, 2009 at the Broadway Centrum Post Office, Quezon City. It was thus timely filed.

Now the substantive issues.

The right of way granted to petitioners covers the network of roads within respondent's subdivision and not merely Road Lot 15.

Petitioners aver that the right of way granted them under the April 30, 1993 RTC Decision pertains only to Road Lot 15 based on the following portion thereof:

> Whereas if [petitioners] would pass through the [respondent's] road lot particularly Lot 15 access to the Marcos Highway is readily available to [petitioners'] property. Only a fence [separates] the Filinvest Subdivision and the [petitioners'] property [which] could be removed x x x anytime.[37]

They argue that the CA in effect improperly reversed and set aside the above final ruling of the RTC when it declared instead that the right of way is composed of the road network within respondent's subdivision.

Petitioners' argument is untenable.

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35 In *Legal Heirs of the Late Edwin B. Deauna v. Fil-Star Maritime Corporation*, supra note 21 at 302, we reiterated that Rule 45 deals with questions of law only. There are however, exceptions to this rule, one of which is when the CA's factual findings are contrary to those of the trial court. Here, as already mentioned, the conflicting findings of fact by the RTC and CA constrain us to rule on the questions of fact presented.

36 CA *rollo*, p. 111.

37 Records, p. 99.

To the Court's mind, the cause of confusion as regards the extent of the right of way granted to petitioners is the absence in the said RTC Decision of any categorical statement with respect thereto. Be that as it may, it is not difficult to conclude therefrom that what was intended to serve as petitioners' right of way consisted of the road network within respondent's subdivision and not merely of Road Lot 15. As may be recalled, the RTC then in resolving the complaint for easement of right of way was confronted with the contentious issue as to which between the two routes from petitioners' property, *i.e.*, the one passing through respondent's subdivision leading to Marcos Highway or the one passing through another property leading to Sumulong Highway, is the more adequate and less prejudicial route pursuant to the requirement of the law. Thus, when it made the following comparison and eventually concluded that the route passing through respondent's subdivision is the more adequate and the less prejudicial way, what it obviously had it mind was the road network in respondent's subdivision since the measurement thereof in meters corresponds with that mentioned by the RTC, *viz*:

> **While in the survey of the property of the [petitioners] it is shown that the distance from the subject lot to the Marcos Highway is approximately 2,350 meters** and the distance from Sumulong Highway to the subject lot is 1,400 meters, such short distance could not be used as absolute basis to deny the [petitioners] the relief prayed for.[38]

On the other hand, the portion of the RTC Decision relied upon by petitioners can in no way be taken to mean that Road Lot 15 alone comprises the right of way granted. By its context, it was only intended to support the RTC's conclusion that the route within respondent's subdivision is the less prejudicial between the two considered routes because it would only take the removal of the fence therein for petitioners to have access to respondent's network of roads which, in turn, would make Marcos Highway accessible to them.

Also, the fact that the CA in its February 13, 1996 Decision observed that the RTC failed to provide in its April 30, 1993 Decision the exact measurement of the right of way does not negate the conclusion that the said right of way refers to respondent's network of roads. It must be remembered that the RTC Decision merely mentioned the distance between Marcos Highway and petitioners' property passing through respondent's subdivision as 2,350 meters. There was no mention with respect to the width of the affected roads which is needed in order to come up with the total area in square meters. This is why the CA also directed the determination of the exact measurement of the right of way when it remanded the case to the RTC. During trial, evidence was received that the roads have a width of 10 meters. Multiplying these factors, *i.e.*, length of 2,350 meters x width of 10 meters, the total area of the roads affected is 23,500 square meters.

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[38] Id. at 100; emphasis supplied.

Moreover, petitioners already admitted during the remand proceedings that that the right of way granted to them affects several road lots within respondent's subdivision. As borne out by the records, respondent formally offered as part of its exhibits a scale map of its subdivision for the purpose of proving the identity of the *road lots* affected by the right of way.[39] In their Comment on the Formal Offer of Exhibits,[40] petitioners did not proffer any objection to the said exhibit, but merely averred that they find irrelevant respondent's submission of the fair market value of the said roads and that the same were also being used in common by the subdivision dwellers.

Section 4, Rule 129 of the Rules of Court provides:

> SEC. 4. *Judicial admissions.* - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

"A party may make judicial admissions in (a) the pleadings; (b) during the trial, either by verbal or written manifestations or stipulations; or (c) in other stages of the judicial proceeding. It is an established principle that judicial admissions cannot be contradicted by the admitter who is the party himself and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it."[41] Since petitioners already judicially admitted that the right of way affects a number of road lots, they cannot not now claim that it only comprises Road Lot 15. Their admission is binding on them.

Besides and logically speaking, if petitioners would indemnify respondent only for Road Lot 15, it follows then that said particular road lot should be the only road lot for which they shall be allowed access. They cannot be allowed access to the other road lots leading to and from the highway as they are not willing to pay indemnity for it. In such a case, the purpose of the right of way, that is, for petitioners to have access to the highway, would thus be defeated.

The ruling in Woodridge is applicable to the present case.

The CA in assessing the indemnity in this case relied on the case of *Woodridge*. Petitioners, however, question the applicability of *Woodridge* to the

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[39] See respondent's Formal Offer of Exhibits where the said scale map was denominated as Exhibit "2," id. at 220-222.

[40] Id. at 240-242.

[41] *Philippine Charter Insurance Corporation v. Central Colleges of the Philippines*, G.R. Nos. 180631-33, February 22, 2012, 666 SCRA 540, 553.

present case. According to them, *Woodridge* is not in point since in the said case the right of way granted is for the exclusive occupation by the dominant estate. Unlike in this case, the road network is not for the exclusive use by the dominant estate but for the common use together with the residents of respondent's subdivision.

For discussion purposes, a short background on *Woodridge* is needed. In the said case, the adjacent lots of co-petitioners Woodridge School, Inc. and Miguela Jimenez-Javier were bounded in the west by a road in respondent ARB Construction Co., Inc's (ARB) Soldier Hills Subdivision IV, which leads to Marcos Alvarez Avenue, a public highway. There is no existing adequate outlet to and from petitioners' properties except through the said road which was being used by the general public. Subsequently, ARB fenced the perimeter of the road fronting the properties of petitioners, thus, effectively cutting off the latter's access to and from the public highway. Petitioners thus filed a complaint before the trial court to enjoin ARB from depriving them of the use of the subject subdivision road. The trial court rendered judgment in favor of petitioners but this was reversed by the CA on appeal. The appellate court held that the road is private property; hence, ARB can exclude petitioners from the use thereof. Nevertheless, it declared that a compulsory right of way exists in favor of petitioners and awarded ₱500,000.00 indemnity to ARB for the use of the road lot. When the case reached this Court, it affirmed the grant of right of way. With respect to the indemnity awarded, the Court said:

> In the case of a legal easement, Article 649 of the Civil Code prescribes the parameters by which the proper indemnity may be fixed. Since the intention of petitioners is to establish a permanent passage, the second paragraph of Article 649 of the Civil Code particularly applies:
>
> Art. 649 x x x
>
> Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the ***indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.*** x x x
>
> On that basis, we further hold that the appellate court erred in **arbitrarily** awarding indemnity for the use of the road lot.
>
> The Civil Code categorically provides for the measure by which the proper indemnity may be computed: *value of the land occupied plus the amount of the damage caused to the servient estate.* Settled is the rule in statutory construction that 'when the law is clear, the function of the courts is simple application.' Thus, to award indemnity using factors different from [those] given by the law is a complete disregard of these clear statutory provisions and is evidently arbitrary. This the Court cannot countenance. The Civil Code has

> clearly laid down the parameters and we cannot depart from them. *Verba legis non est recedendum.*[42] (Emphases and italics in the original)

But since the metes and bounds of the property covered by the easement were not yet defined, the Court in *Woodridge* remanded the case to the trial court for the determination of the same and of the corresponding indemnity, hinting that the trial court may take into consideration the fact that the affected road lot is being used by the general public in mitigating the amount of damage that the servient estate is entitled to.

The above summary of *Woodridge* shows that petitioners' understanding of the said case is misplaced. Contrary to their assertion, the right of way in the said case was not for the exclusive use or occupation of the dominant estate. It was actually undisputed there that the road covered by the right of way was being used by the general public such that the Court even advised the trial court that in fixing the amount of damages, it may take into consideration the said fact. Hence, the alleged difference between *Woodridge* and this case is merely perceived by petitioners.

On the other hand, the Court notes the following factual similarities between the two cases: (1) the servient estates are both subdivisions; (2) the easements of right of way consist of existing and developed road/roads; (3) the right of way would be used in common by the dominant estates and the residents of the subdivisions; and (4) the intention of petitioners in both cases is to establish a permanent passage. Indeed, *Woodridge* is on all fours with the present case. Hence, as held therein and pursuant to the second paragraph of Article 649, the proper indemnity in this case shall consist of the value of the land plus the damages caused to the servient estate.

It is the needs of the dominant estate which ultimately determines the width of the passage.

The Court, however, deems it necessary to modify the width of the easement which would serve as basis in fixing the value of the land as part of the proper indemnity.

Article 651 of the Civil Code provides:

> Art. 651. The width of the easement of right of way shall be that which is sufficient for the needs of the dominant estate, and may accordingly be changed from time to time.

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[42] *Woodridge School, Inc. v. ARB Construction Co., Inc.*, supra note 18.

According to Senator Arturo M. Tolentino, a noted civilist, it is the needs of the dominant tenement which determine the width of the passage.[43]

As mentioned, the right of way constituting the easement in this case consists of existing and developed network of roads. This means that in their construction, the needs of the dominant estate were not taken into consideration precisely because they were constructed prior to the grant of the right of way. During the remand proceedings, it was established that the width of the affected roads is 10 meters. Multiplied by the distance of 2,350 meters, the total area to be indemnified is 23,500 square meters and at a price of ₱1,620.00 per square meter, petitioners must pay respondent the whopping amount of ₱38,070,000.00 for the value of the land. Under the circumstances, the Court finds it rather iniquitous to compute the proper indemnity based on the 10-meter width of the existing roads. To stress, it is the needs of the dominant estate which determines the width of the passage. And per their complaint, petitioners were simply asking for adequate vehicular and other similar access to the highway. To the Court's mind, the 10-meter width of the affected road lots is unnecessary and inordinate for the intended use of the easement. At most, a 3-meter wide right of way can already sufficiently meet petitioners' need for vehicular access. It would thus be unfair to assess indemnity based on the 10-meter road width when a three-meter width can already sufficiently answer the needs of the dominant estate. Therefore bearing in mind Article 651, the Court finds proper a road width of 3 meters in computing the proper indemnity. Thus, multiplying the road length of 2,350 meters by a road width of 3 meters, the total area to be indemnified is 7,050 square meters. At a value of ₱1,620.00 per square meter, the total value of the land to form part of the indemnity amounts to ₱11,421,000.00. It must be made clear, however, that despite their payment of the value of the land on the basis of a three-meter road width or basically for a one-way traffic road only, petitioners must be allowed to use the roads within respondent's subdivision based on the existing traffic patterns so as not to disrupt the traffic flow therein.

In addition, petitioners must bear as part of damages the costs for the removal of the fence in Road Lot 15. Also, the Court takes judicial notice that subdivision residents are paying monthly dues for purposes of road maintenance, security, garbage collection, use and maintenance of other subdivision facilities, etc. In view of the fact that the road lots affected would be used by the dominant estate in common with the subdivision residents, the Court deems reasonable to require petitioners to pay the homeowner's association in respondent's subdivision, by way of monthly dues, an amount equivalent to half of the rate of the monthly dues that the subdivision residents are being assessed. This shall serve as petitioners' share in the maintenance of the affected road lots.

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[43] COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Book II, 1987 reprinting, p. 356.

In easement of right of way, there is no alienation of the land occupied.

Petitioners argue that it is unfair to require them to pay the value of the affected road lots since the same is tantamount to buying the property without them being issued titles and not having the right to exercise dominion over it. The argument is untenable. Payment of the value of the land for permanent use of the easement does not mean an alienation of the land occupied.[44] In fact under the law and unlike in purchase of a property, should the right of way no longer be necessary because the owner of the dominant estate has joined it to another abutting on a public highway, and the servient estate demands that the easement be extinguished, the value of the property received by the servient estate by way of indemnity shall be returned in full to the dominant estate.[45] This only reinforces the concept that the payment of indemnity is merely for the use of the right of way and not for its alienation.

WHEREFORE, the Petition is hereby **PARTLY GRANTED**. The September 25, 2009 Decision and March 1, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 87920 are **AFFIRMED** with **MODIFICATIONS** with respect to the proper indemnity in that petitioners shall: (1) pay respondent the amount of ₱11,421,000.00 representing the value of the road lots constituting the right of way; (2) bear the cost of the removal of the fence located in respondent's Road Lot 15 as well as the cost for the maintenance of such opening; and, (3) pay the homeowner's association in respondent's subdivision, by way of monthly dues, an amount equivalent to half of the rate of the monthly dues that the subdivision residents are being assessed. However, the Court of Appeal's ruling that petitioners' motion for reconsideration was filed out of time is **REVERSED** and **SET ASIDE**.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

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44 Id. at 355.

45 CIVIL CODE OF THE PHILIPPINES, Article 655.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

PRESBITERO J. VELASCO, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

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, 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