

**LUDOVICO D. HILADO SUBSTITUTED BY HIS HEIRS AND
REPRESENTED BY HIS HEIR ATTTY. GEORGINA H. HILADO,
PETITIONERS, VS. REGIONAL TRIAL COURT, BRANCH 61,
KABANKALAN CITY AND FRANCIS ...**

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is a Petition for Prohibition and Mandamus with prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction[1] seeking to prohibit the Regional Trial Court, (RTC), Branch 61, Kabankalan City, from proceeding with the Civil Case No. 1307.

Petitioners' prayer for preliminary injunction, alleged that the court a quo has ordered the consolidation of Civil Case No. 1307 and Cadastral Case No. 1011, by virtue of the consolidation, petitioners may be deprived of the fruits of the litigation and the private respondents are making a mockery of the settled principles of res judicata and forum-shopping unless restrain or enjoin by this Court.

A preliminary injunction is an order granted at any stage of an action prior to the judgment or final order requiring a party or a court, agency or a person to refrain from a particular act or acts. It is the "strong arm of equity," an extraordinary peremptory remedy that must be used with extreme caution, affecting as it does the respective rights of the parties.[2]

Sections 3 and 5, Rule 58 of the 1997 Rules of Civil Procedure on preliminary injunction, provide the requirements for the issuance of a writ of preliminary injunction or a TRO:

SEC. 3. Grounds for issuance of preliminary injunction. - A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

SEC. 5. Preliminary injunction not granted without notice; exception. - No preliminary injunction shall be granted without hearing and prior notice to the party or persons sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20) days from service on the

party or person sought to be enjoined, except as herein provided. Within the twenty-day period, the court must order said party or person to show cause at a specified time and place, why the injunction should not be granted. The court shall also determine, within the same period, whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

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From the above foregoing provisions, it appears clearly that before a writ of preliminary injunction may be issued, a clear showing must be made that there exists a right to be protected[3] and that the acts against which the writ is to be directed are violative of an established right.

Here, petitioners' right to injunctive merely alleged that unless restrained or enjoined by this Court petitioners may suffer grave and irreparable damage and injury. Petitioners allegation does not state clearly that a right exists that warrants the issuance of the preliminary injunction. Such relief of preliminary injunction has not been adequately demonstrated by the petitioners. Thus, petitioners' prayer for preliminary injunction is hereby DENIED.

After a careful perusal of the petition, We found the following infirmities, First, petitioners failed to indicate in the Petition the material date showing when notice of the November 11, 2013 Order of the RTC was received, in violation of Section 3, Rule 46 of the 1997 Rules of Civil Procedure. Second, petitioners failed to avail the procedural requirement of filing a motion for reconsideration before filing a Petition for Prohibition and Mandamus[4] under Rule 65 of the Rules of Civil Procedure. Third, Petitioners' counsel failed to indicate in the February 28, 2014 Petition her 2014 Integrated Bar of the Philippines (IBP) and professional tax receipts' (PTR) respective numbers and dates and places of issuance thereof, in violation of Bar Matter No. 287 dated July 9, 1985 and Bar Matter No. 1132 dated November 12, 2002. Fourth, failure of the petitioners' counsel to indicate the necessary details of his notarial certificate, in violation of Section 2, Rule VIII of the Rules of Notarial Practice[5] (A.M. 02-8-13-SC), as follows:

- a. The serial number of the commission of the notary public.
- b. The expiration date of the commission of the notary public.
- c. The PTR number and date of issuance thereof, in the Notarial Certificate in the Verification and Certification of Non-Forum Shopping are unintelligible.

The foregoing procedural and substantial defects warrant an outright dismissal of the instant petition.

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

Lagura-Yap, and * Quijano-Padilla, JJ., concur.

* Acting Junior Member per Office Order No. 472-13-ABR dated December 12, 2013.

[1] Rollo, pages 4-12.

[2] St. James College of Parañaque v. Equitable PCI Bank, G.R. No. 179441, August 9, 2010, 627 SCRA 328, 345.

[3] Presidential Commission on Good Government v. Sandiganbayan (Second Division), G.R. No. 152500, September 14, 2011, 657 SCRA 477, 494.

[4] Pio Delos Reyes (deceased), represented by heirs Fidel Delos Reyes, et al., v. Honorable Waldo Q. Flores, in his capacity as Senior Deputy Executive Secretary, Office of the President, Honorable Rene C. Villa, in his capacity as Secretary of the Department of Land Reform (formerly Department of Agrarian Reform), et al., G.R. No. 168726, March 5, 2010.

[5] 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC), effective Aug. 1, 2004, amended on Feb. 19, 2008.

Sec. 2 Contents of the Concluding Part of the Notarial Certificate. - The notarial certificate shall include the following:

(a) the name of the notary public as exactly indicated in the commission;

(b) the serial number of the commission of the notary public;

(c) the words "Notary Public" and the province or city where the notary public is commissioned, the expiration date of the commission, the office address of the notary public; and

(d) the roll of attorney's number, the professional tax receipt number and the place and date of issuance thereof, and the IBP membership number.

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