

MANILA BANKING CORPORATION, PETITIONER, VS. COURT OF APPEALS AND LUZON BROK-ERAGE CORPORATION, RESPONDENTS.

G.R. No. L-45961. July 03, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

The sufficiency of a complaint for injunction is what is chiefly involved in these appellate proceedings. The Court of Appeals, reversing the Trial Court, held that the complaint does set out a cause of action. It is that holding that is now challenged in this Court by the petitioner, Manila Banking Corporation.

The complaint was filed in the Court of First Instance of Surigao del Norte by Luzon Brokerage Corporation against said bank and two (2) others, the Pacific Copra Export Co., Inc. (PACOCO), and the Provincial Sheriff of Surigao del Norte.[1] Basically, it alleged the following facts, to wit:

1. Luzon Brokerage Corporation -- hereafter, simply LUZON -- entered into (a) a "Field Warehouse Storage Agreement" with PACOCO to operate warehouses in Surigao, Surigao del Norte for Philippine copra in bags and/or in bulk,[2] and (b) some three and a half years later,[3] a lease of the latter's two warehouses for the purpose of depositing copra therein.
2. Pursuant to the agreements, LUZON received from PACOCO for deposit in said warehouses 150 long tons of copra resecada valued at P84,000.00, at least, in connection with which LUZON issued the following warehouse receipt, viz.:

"FWR No. 978 dated July 29, 1964 for 150 long tons copra resecada "for the account of and to be delivered without surrender of this warehouse receipt upon written order of Pacific Banking Corporation, Manila, for Wells Fargo Bank, San Francisco, California, Pledge for Paxsmo Inc., San Francisco, California, covering Letter of Credit No. 14549."

3. Some two months later, Manila Banking Corporation -- hereafter simply MANILABANK -- addressed a formal request to the Provincial Sheriff of Surigao del Norte to extra-judicially sell the copra above described at public auction.[4]
4. That request was made without prior satisfaction of LUZON's warehouseman's lien, the surrender of the warehouse receipt, or presentation of a "written order" from the entities mentioned in said receipt.

Alleging further that the extra-judicial sale was violative of LUZON's rights, and would cause it injustice and irreparable injury, the complaint prayed that:

- "(a) a writ of preliminary injunction be issued ex parte restraining the defendants, their agents, representatives or deputies from selling the 150 long tons of copra in the two warehouses of PACOCO leased to plaintiff * * and from molesting said plaintiff in its possession thereof;
- (b) after due proceeding, defendants be perpetually enjoined from committing said acts;

(c) defendants (MANILABANK and PACOCO) be sentenced to pay plaintiff not less than P6,000.00 by way of attorney's fees and other necessary expenses of litigation;

(d) (said) defendants ** taxed the costs of suit; (and)

* * (plaintiff) be granted such other equitable remedies as may be deemed just in the premises."

The Trial Court issued a temporary restraining order and set the application for preliminary injunction for hearing.[5] MANILABANK filed an opposition to the injunction application.[6] LUZON replied.[7] The Court then issued an order requiring LUZON, MANILABANK, and another claimant to the copra, a certain Ong Hing Lian, "to submit simultaneous memoranda" on the issue. In the same Order,[8] the Court directed the following:

"As the subject matter of this case is copra, which is fungible, and copra will deteriorate in the passing of time, in order to save this from deterioration and ultimate loss, to the prejudice of the party or parties who may be found to be entitled to the same, the Court hereby directs the Provincial Sheriff to cause notice to be published again according to law for the sale at public auction of the copra in question, to the highest and best bidder within five days from the time that the notices are published or posted according to the requirements of the law.

The Provincial Sheriff shall hold in his custody all the proceeds of the sale of the copra until the court will have decided to whom to award the same."

The copra was accordingly sold at public auction for P78,470.11, which amount was deposited with MANILABANK in the name of the Provincial Sheriff of Surigao del Norte, subject to the orders of the Trial Court.[9]

Memoranda were also submitted by MANILABANK AND LUZON as required. MANILABANK's memorandum contained a motion to dismiss the complaint on the ground of failure to state a cause of action.[10] LUZON's memorandum, as might be expected, included an opposition to the motion.[11]

Thereafter, the Court promulgated an Order dismissing the complaint with costs against plaintiff LUZON, declaring MANILABANK entitled to all the balance of the proceeds of the copra in the amount of P78,062.71 and directing the Sheriff to deliver the same to MANILABANK.[12] The Court cited the following reasons for the dismissal of the action:

1) a "re-reading of the complaint -

* * does not show that the plaintiff seeks to recover anything from the defendant Pacific Copra Export Co., Inc., but only to prevent the defendant, the Manila Banking Corporation and the Provincial Sheriff from doing something. It only avers that it has superior liens and that it is entitled to the reliefs prayed for it only for the issuance of a permanent injunction and for the defendants to pay the plaintiff attorney's fees in the amount of P6,000.00. * * * (Moreover) under the New Rules of Court, injunction can no longer be maintained as a main action but only as ancillary or in aid to a main action."

2) to follow LUZON's theory to its logical conclusion would mean keeping the copra indefinitely in the bodega of PACOCO, ultimately resulting in its "loss by deterioration," to the prejudice of the parties;

3) even if the action were proper, LUZON could not be awarded the copra in question because, according to its Field house Warehouse Receipt No. 978, the copra it was claiming was deposited in Warehouse No. 8, whereas that mortgaged to MANILABANK was in bodegas Numbered 1 and 2 of PACOCO; furthermore, while the chattel mortgage of the copra in favor of MANILABANK had been duly registered, the warehouse storage agreement relied on by LUZON had not been so registered; and

4) the copra had already been sold at public auction, and the proceeds deposited with MANILABANK subject to the Court's orders.

LUZON appealed to the Court of Appeals. The Court set aside said order of dismissal, declaring it to be "erroneous," and remanded the case "to the lower court for further proceedings and trial on the merits." In its Decision,[13] the Court of Appeals said:

- 1) "There is still a main action of injunction * * (which) should not be confused with the provisional remedy of preliminary injunction."
- 2) "The complaint states a sufficient cause of action * * (which is set out in its paragraphs 3 to 6, inclusive; i.e.,) the right to keep the copra in question in its custody until its lien as a depository has been satisfied and to prevent the defendants to sell said copra at public auction without satisfying the plaintiff's lien thereon."

MANILABANK appealed to this Court by certiorari. Here it raises the "principal question of law ** (of) whether or not an injunction can be issued against consummated acts;" and "as a corollary, whether or not a case that has indubitably become moot and academic can still be tried by a court." [14]

The Court of Appeals is of course correct in so far as it opines that in this jurisdiction, and under the present state of the law, there is "still a main action of injunction," which prays for judgment embodying a final injunction and which is distinct from, and "should not be confused with the provisional remedy of preliminary injunction," the sole object of which is to preserve the status quo until the merits can be heard.[15]

Rule 58 of the Rules of Court provides for both types of remedies: a preliminary and a final injunction. Section 1 of the Rule defines a preliminary injunction as -

"* * an order granted at any stage of an action prior to the final judgment, requiring a person to refrain from a particular act * * (or) the performance of a particular act, in which (latter) case it shall be known as a preliminary mandatory injunction."

Section 10 of the same Rule, on the other hand, treats of a final injunction.[16] It reads as follows:

"* * * If upon the trial of the action it appears that the plaintiff is entitled to have the act complained of permanently enjoined, the court shall grant a final injunction perpetually restraining the defendant from the commission or continuance of the act or confirming the preliminary mandatory injunction."

Furthermore, Section 4, Rule 39, also adverted to by the Appellate Tribunal, deals inter alia with "an action for injunction," and decrees that the judgment therein "shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal."

An action for injunction, therefore, is as it has always been, a recognized remedy in this country. It is, as above intimated, a suit which has for its purpose the enjoinder of the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or his compulsion to continue performance of a particular act. It has an independent existence. It is similar to the special civil action of prohibition under Rule 65, except that the latter, in common with other special civil actions, deals with special matters requiring a special procedure,[17] i.e., it is concerned with public officers or entities performing public duties: tribunals, corporations, boards, or persons exercising functions judicial or ministerial,[18] whereas the former, an ordinary suit,[19] generally involves acts and transactions of private individuals. The action for injunction is distinct from the ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. And, of course, in an action of injunction, the auxiliary remedy of a preliminary injunction, prohibitory or mandatory, may issue.

Ollendorf v. Abrahamson, decided by this Court as early as in 1918,[20] is illustrative of this form of action. The case involved an "obligation imposed upon defendant by the particular clause of his contract * * (which was) negative in character" (i.e., "not to engage in a similar or competitive business to that of the plaintiff" anywhere within the Philippine Islands for a period of five years). The Court observed that the traditional mode of enforcing obligations of this sort was by an injunction suit.

" * * . Unless defendant voluntarily complies with his undertaking there is no way by which the contract can be enforced except by the injunctive power of judicial process. Such negative obligations have long been enforced by the courts in this manner. As stated by High in his well known work on Injunctions (Vol. 2, pp. 877-878):

"The remedy by injunction to prevent the violation of negative agreements, or contracts not to do a particular thing, is closely akin to the remedy by way of specific performance of agreements of an affirmative nature. In both cases the object is substantially one and the same, and by enjoining the violation of a negative agreement the court of equity in effect decrees its specific performance. (Lumley vs. Wagner, 1 DeGex, M. & G., 604)."

Where by the terms of a contract imposing a positive obligation the obligor is entitled to a specific performance, it will not avail the defendant to show that plaintiff will suffer no pecuniary damage if the contract is not performed. Upon like reason, when the undertaking is negative in character and defendant is violating the obligation imposed upon him the court may interfere without requiring proof of actual damage. (High on Injunctions, par. 1135, citing Dickenson vs. Grand Junction Canal Co., 15 Beav., 270)."

As well established is the rule that an action for permanent injunction should be dismissed when it appears in the trial or otherwise that the acts, to restrain which the action was begun, have been accomplished or fully executed.[21] It is this rule that infuses merit into the petition at bar, impelling issuance of the writ thereby prayed for.

The acts sought to be restrained by LUZON's complaint have already been accomplished. What the complaint sought essentially was to perpetually stop the Provincial Sheriff of Surigao del Norte and his co-defendants, and "their agents, representatives or deputies from selling the 150 long tons of copra in the two warehouses of PACOCO leased to plaintiff (LUZON) * * and from molesting said plaintiff in its possession thereof." This, on the theory that the extra-judicial foreclosure sale was being attempted without prior satisfaction of LUZON's warehouseman's lien, the surrender of the warehouse receipt, or presentation of a "written order" from the entities mentioned in said receipt.

But the undisputed fact is that LUZON had long since ceased to have possession of the copra rescada, and the mortgage sale thereof has already been consummated. It is obviously no longer possible to grant it the relief it was seeking against MANILABANK, i.e., the permanent restraint of the mortgage sale of the copra, and of any interference with its possession thereof.

Nor may the complaint be deemed as alternatively praying for payment of warehouse fees for not only does it fail to set out a prayer for the payment of said fees, but more importantly, there is nothing in the body of the complaint particularly setting forth a claim therefor. The general prayer "for such other reliefs as may be just and proper" is meaningless in this context.

In any event, MANILABANK may not be deemed a debtor of LUZON as far as warehouse fees for the storage of copra deposited by PACOCO are concerned. While LUZON had a right of action against PACOCO to recover fees for the storage of the copra deposited with it by the latter, it had no such right against MANILABANK. The only right that LUZON had vis a vis MANILABANK (or any other claimant of the deposited copra, aside from PACOCO) consisted of the so-called warehouseman's lien, i.e., the right to retain possession of the copra and refuse to release it to the claimant except only upon surrender of the warehouse receipt and payment of the storage

charges. But that lien, being possessory in nature, was lost when LUZON gave up possession of the copra;^[22] and when that happened, LUZON ceased to have any right whatever against MANILABANK with respect to the copra. Certainly, as regards the deposit of the copra by PACOCO with LUZON, the latter had and has no right of action against MANILABANK for recovery of the storage charges therefor. Its lien having been lost, LUZON could look only to its debtor, PACOCO, for payment of said storage charges.^[23]

WHEREFORE, the challenged Decision of the Court of Appeals of February 28, 1977 is REVERSED, and the Trial Court's Order dated November 25, 1964 is REINSTATED AND AFFIRMED, with costs against private respondent.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] It was filed on Oct. 20, 1964, and was docketed as Civil Case No. 1636

[2] The agreement was entered into on December 14, 1956

[3] On July 29, 1960

[4] The copra was mortgaged to MANILABANK as security for an indebtedness of P200,000.00; the deed of chattel mortgage was duly registered with the Register of Deeds of Surigao del Norte. Record on Appeal (Rollo, p. 29), pp. 11-12.

[5] Rollo, p. 29: Record on Appeal, pp. 11-13

[6] Id., pp. 14-26

[7] Id., pp. 27-41

[8] Id., pp. 42-44

[9] Id., pp. 74-75, 79

[10] Id., pp. 47-60

[11] Id., pp. 61-73

[12] Id., pp. 79-85. The order is dated November 25, 1964

[13] Rendered on Feb. 28, 1977, Fernandez, J., ponente, and Bautista and Alampay, JJ., concurring. Rollo, pp. 31 et seq.

[14] Rollo, p. 21

[15] Redulfa v. Alfonso, 76 Phil. 225, citing Fredericks v. Huber, 180 Pa. 572; 37 Atl. 90.

[16] The Rules of Court of 1940 also treated of a preliminary and a final injunction (Secs. 1 and 10, Rule 60).

[17] See Moran, Comments on the Rules, 1980 ed., Vol. 3, p. 141

[18] Sec. 2, Rule 65, Rules of Court

[19] See Sec. 1, Rule 2

[20] 38 Phil. 585, 593-594. An even earlier case, Gilchrist v. Cuddy, 29 Phil. 542 (1915), sanctioned the rule that a "permanent injunction" was the remedy against "malicious interference (by strangers) with lawful and valid contracts." Rustia v. Franco, 41 Phil. 280 (1920) also held a permanent injunction to be "a perfectly legitimate

remedy to protect the owner of land, being in possession, from illegitimate acts of repeated intrusion by a stranger, as where a person who has no right enters from time to time to cut wood or carry off other products." See, also, *Barrameda v. Gontang*, 19 SCRA 387

[21] *Reyes v. Harty*, 21 Phil. 422; *Larap Labor Union v. Victoriano*, 97 Phil. 435, 439 citing *Reyes v. Harty*, *supra* (1955), *Remonte v. Bonto*, 16 SCRA 257 (1966); *Tomulo v. Yñiquez*, G.R. No. 71908, Feb. 4, 1986;

[22] Under SEC. 29, of Act No. 2137 (The Warehouse Receipts Law), a warehouseman loses his lien upon goods *inter alia* by "surrendering possession thereof" "without requiring payment of his lien because a warehouseman's lien is possessory in nature (*Agbayani*, *Commercial Laws of the Philippines*, 1976 ed., Vol. 1, p. 471).

[23] SEE Secs. 27, 28, 32, Act No. 2137

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