BANK OF COMMERCE, PETITITONER, VS. REGIONAL TRIAL COURT-MANILA, BRANCH 47 (THE HON. PAULINO Q. GALLEGOS), METROPOLITAN TRIAL COURT-MANILA, BRANCH 12 (THE HON. JAIME B. SANTIAGO)...

Ponente: CORALES, J.

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CORALES, J.:

This is a Petition for Certiorari[1] under Rule 65 of the Rules of Court with prayer for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) assailing the October 28, 2011[2] and May 9, 2012[3] Orders of the Regional Trial Court (RTC), Branch 47, Manila denying Bank of Commerce's application for the issuance of a WPI in Civil Case No. 11-125413 entitled “Bank of Commerce v. Metropolitan Trial Court, Manila Branch 12 (the Honorable Jaime B. Santiago), Sheriff III Remegio B. Mallari, and SJM Realty Corporation”.

The Antecedents

This case arose from the implementation of the June 2, 2009 Decision of the Metropolitan Trial Court (MTC), Branch 12, Manila in the unlawful detainer case filed by SJM Realty Corporation (SJM) against Guo Zhao Fu (Guo), a Chinese national who entered the country on April 11, 2008 under a Temporary Visitor's Visa.[4] Guo was also a holder of a Special Resident Retiree's Visa (SRRV) No. M-011814[5] with an inward foreign remittance of US$50,000.00 to his dollar time deposit account with Bank of Commerce.[6] Aside from ordering Guo to vacate the premises at 228 Espana St., Sampaloc, Manila, the MTC directed him to pay P436,800.00 unpaid rentals for February 2009 to April 2009 plus 3% monthly penalty; P128,4000 reasonable compensation for the use and occupation of the premises starting May 2009 until he finally and actually vacates the same; and P5,000.00 attorney's fees plus cost of suit. On appeal, the RTC affirmed the foregoing awards with the modification that the “unpaid rentals shall cover only the period of February 01, 2009 to March 01, 2009 and the monthly compensation for the use and occupation of the subject premises shall commence on April 01, 2009 until appellant has vacated the same”.[7]

On December 2, 2009, the MTC issued a writ of execution for the implementation of the modified decision.[8] Pursuant thereto, Sheriff III Remegio B. Mallari issued a Notice to Pay and To Vacate Premises against Guo[9] and served a Notice of Garnishment upon the Philippine Retirement Authority (PRA) and the Bank of Commerce.[10] In its reply letter, PRA claimed that there is no depositor-depositary relationship between the agency and Guo, thus, it could not be considered as a garnishee as contemplated by Section 9, Rule 39 of the Rules of Court.[11] On the other hand, the Bank of Commerce invoked the exemption of foreign currency deposits from garnishment as provided in Republic Act No. 6426 (R.A. No. 6426).[12]

In its subsequent January 21, 2011 Order,[13] the MTC noted SJM's manifestation that Guo's whereabouts were unknown and the monetary aspect of the writ of execution remained unsatisfied. It also ruled that Guo's deposit with the Bank of Commerce does not qualify for the exemption under Section 8 of R.A. No. 6426[14] and

directed the bank to comply with the Notice of Garnishment. The Bank of Commerce moved for reconsideration but the MTC denied the same through its March 11, 2011 Order.[15]

It appears that Guo had been deported on August 12, 2009 and his SRRV No. M-011814 had already been cancelled.[16]

Aggrieved, the Bank of Commerce filed before the RTC a petition for certiorari, docketed as Civil Case No. 11-125413, seeking the annulment of the MTC's January 21 and March 11, 2011 Orders and praying for the issuance of a TRO and WPI to restrain the MTC and SJM from taking any further action in the unlawful detainer case.[17]

The Ruling of the RTC

On April 13, 2011, the RTC granted the Bank of Commerce's prayer for TRO.[18] However, after the presentation of evidence in support of the application for the issuance of a WPI, the RTC issued the first assailed Order dated October 28, 2011. It denied the application for WPI for failure to establish all the requisites for its issuance and held that Guo's dollar time deposit account lost the protection accorded to it by law when his status in the Philippines reverted to that of a mere transient alien or tourist due to his deportation and his SRRV and membership in the PRA program cancelled. The relevant portions of the October 28, 2011 Order read:[19]

> Secondly, petitioner BOC would not likely suffer any serious material injury even if no injunctive writ is issued. In the first place, petitioners BOC was not the aggrieved defendant in the ejectment case against whom the US$50,000.00 would be garnished, as it is just the depository bank of the depositor Guo Zhao Fu who is no longer clothed with the protection and benefit afforded to him by RA 6426 and EO 1037.
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> Likewise, petitioner's fear that it and its officer would suffer grave and irreparable injury if they would be forced to comply with the assailed orders, as they would be subjected to the penal provision of RA 5426 and/or this has an adverse effect effect to petitioner's banking operation is a mere speculation. The jurisprudence laid down in the case of Salvacion v. Central Bank of the Philippines anyway sets them free of such unfounded fear. Bear it in mind that garnishment of bank deposits due to a judgment debt is a common and known legal process and accordingly would not result to a new adverse effect upon petitioner's operation, being a long time practice.
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> Wherefore, and in view of the foregoing, let the application for the issuance of a writ of preliminary injunction be, as it is, hereby DENIED.
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> xxx

The RTC likewise denied the Bank of Commerce's motion for reconsideration. In its second assailed Order[20] dated May 9, 2012, the RTC stressed that Guo's deposit is a structured account withdrawable upon the retiree's death or de-enlistment from the PRA program; it could not be considered an investment under the Rules and Regulations Implementing Executive Order No. 1037, thus, the PRA's approval in withdrawing the deposit is not required when the retiree is no longer a member of its program.

Undettered, the Bank of Commerce is before Us via the instant petition for certiorari premised on the following grounds:

> I. PUBLIC RESPONDENT RTC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED ORDERS DATED OCTOBER 28,

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2011 AND MAY 9, 2012 TO THE EFFECT:

a. THAT PUBLIC RESPONDENT MTC HAS NOT ACTED WITH GRAVE ABUSE OF DISCRETION IN ISSUING ITS ORDERS DATED JANUARY 21, 2011 AND MARCH 11, 2011; AND

b. THAT THE DOLLAR DEPOSIT OF GUO ZHAO FU UNDER THE PRA RETIREMENT PROGRAM MAY BE SUBJECT OF LEVY AND GARNISHMENT FOR THE FOLLOWING REASONS:

(i.)

THE CANCELLATION OF MR. FU'S MEMBERSHIP IN THE PRA PROGRAM HAD CAUSED HIS RESIDENCE STATUS TO REVERT BACK TO A MERE TRANSIENT ALIEN OR TOURIST;

(ii.)

MR. FU'S ENTRY DEPOSIT OF US$ 50,000.00 CANNOT, IN A STRICT SENSE OF LAW, BE CONSIDERED AN INVESTMENT; AND

(iii.)

MR. FU'S DOLLAR DEPOSIT CAN BE WITHDRAWN WITHOUT THE APPROVAL OF PRA SINCE HE IS NO LONGER A MEMBER OF THE PROGRAM;

AND THUS, VIRTUALLY DISPOSING THE MAIN CASE, DESPITE ITS INTERLOCUTORY NATURE, WITHOUT THE BENEFIT OF TRIAL IN VIOLATION OF THE CONSTITUTIONAL RIGHT TO DUE PROCESS.

II. PUBLIC RESPONDENT RTC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PETITIONER HAS NOT ESTABLISHED A CLEAR AND UNMISTAKABLE RIGHT TO BE PROTECTED AND IT WOULD NOT LIKELY SUFFER ANY SERIOUS MATERIAL INJURY EVEN IF NO INJUNCTIVE WRIT IS ISSUED, WHEN THERE WERE OVERWHELMING EVIDENCES ON RECORD TO PROVE THE CONTRARY AND THAT SAID RULINGS WERE PREMISED ON THE ERRONEOUS AND PREMATURE DISPOSITION OF THE ISSUES IN THE MAIN CASE FOR WHICH PETITIONER BOC'S RIGHT TO DUE PROCESS WAS VIOLATED.[21]

The Bank of Commerce argues that in denying their application for WPI, the RTC already disposed of their petition for certiorari without trial as shown by the excerpt in the January 21, 2011 Order stating “as such public respondents are not said to have acted with grave abuse of discretion in issuing orders, there being factual and legal bases for them to do so”. The bank also imputes grave abuse of discretion on the part of the RTC when it held that the Bank of Commerce has not established its clear and legal right for the protection sought for. According to the bank, Guo's deposit is dissimilar to the foreign currency deposit involved in the case of Salvacion v. Central Bank[22] because it was expressly labeled as an investment by Section 9(d)[23] of E.O. No. 1037 which aims to promote membership in the PRA program. It added that the character of Guo's deposit remained unchanged despite the termination of his membership in the PRA program and the garnishment of such deposit would amount to a baseless disregard of Section 9(b) of E.O. No. 1037 which guaranteed a repatriation of foreign currency to members of the PRA program. The Bank of Commerce also maintains that the release of Guo's deposit has adverse “far-reaching effect” to its business as well as liabilities to its officers for violating the law. The bank also claims that should it violate the MOA with PRA, it stands to lose the latter's deposits in the aggregate amount of US$15,850,000.00 as well as the trust and confidence of its clients and depositors. Lastly, it contends that the benefit to the general public of the encouragement in foreign investment outweighs the enforcement of the writ of garnishment in favor of SJM.[24]

In defense of the assailed Orders, SJM invokes Article 19 of the New Civil Code[25] and the ruling in the Salvacion case allowing the garnishment of the foreign currency deposit of an alien who commits injustice or crime to this country's national. Quoting the testimony of Bank of Commerce's witness, Orlando J. Habitan of the PRA, who explained that a retiree's deposit would be returned or expatriated to him upon the termination of his membership in the PRA program, SJM argues that a judgment favorable to the Bank of Commerce would subject the Philippine economy to turmoil as a retiree could use his PRA investment as an instrument of deception and fraud.[26]

In Our October 25, 2012 Resolution, We already denied the Bank of Commerce's application for issuance of a TRO and WPI.[27]

This Court's Ruling

The petition fails to persuade.

The appellate courts do not generally interfere with the RTC's exercise of sound judicial discretion in injunctive matters except in cases where there is grave abuse of that discretion.[28] Grave abuse of discretion in the issuance of a WPI implies a capricious and whimsical exercise of judgment equivalent to a lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice, or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or a refusal to act at all in contemplation of law.[29]

In this case, no grave abuse of discretion could be attributed to the RTC in denying the Bank of Commerce's application for WPI because not all the elements required for its issuance are present at the time of the hearing.

To be entitled to an injunctive writ, the applicant must be able to show that (1) an actual, clear, and unmistakable right exists which is directly threatened by the act sought to be enjoined; (2) the invasion of the right is material and substantial; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage. A right in esse is a clear and unmistakable right to be protected, one clearly founded on or granted by law or is enforceable as a matter of law.[30] Although the propounded right need not be conclusively established at that early stage, the applicant must still show, at least tentatively, that the right in fact exists and is not vitiated by any substantial challenge as may be raised by the adverse party.[31]

The Bank of Commerce failed to establish its clear and unquestionable right which allegedly warrants the protection of the WPI. The very existence of its supposed right to be exempt from garnishment is actually the subject of its petition for certiorari before the RTC. Obviously, the bank's claimed right is still doubtful due to this pending litigation. Pursuant to established jurisprudence, a writ of injunction is not proper when the applicant's claimed right or title is doubtful or disputed.[32] It would not be issued to protect or enforce contingent, abstract, or future rights, or to protect a right not in esse and which may never arise.[33] Even the possibility of irreparable damage, absent proof of an actual existing right, is not a sufficient ground for injunction. Needless to say, the Bank of Commerce's arguments regarding the loss of its other PRA accounts and of its goodwill or standing among its clients and depositors deserve scant consideration for being purely speculative. There is no proof to support this supposedly irreparable injury.[34]

It cannot also be said that the assailed Orders already disposed of the main petition for certiorari. It bears stressing that the denial of the WPI does not preclude the RTC from receiving additional evidence and hearing further arguments to determine the issues raised in the case a quo.[35] In fact, the evidence submitted for purposes of the application for a preliminary injunction is neither conclusive nor complete. Only a “sampling” need be presented to give the court an idea of the justification for the relief sought, pending the decision of the case on the

merits.[36] Thus, the resulting opinions and factual findings of the RTC are merely interlocutory. Vital facts not yet obtained or presented upon the application for injunction may yet be presented during the rest of the proceedings.[37] To stress, a WPI would become a prejudgment of a case only if it granted the main prayer in the complaint or responsive pleading, so that nothing would be left for the court to try except merely incidental matters[38] but this is not the case here.

Corollary thereto, the Court notes that the RTC's statement in the assailed October 28, 2011 Order that “public respondents are not said to have acted with grave abuse of discretion in issuing orders, there being factual and legal bases for them to do so” was a mere obiter dictum. It was simply an opinion upon a point not necessarily involved in the determination of the cause,[39] constituting neither an enforceable relief nor a source of a judicially actionable claim. By reason of its non-binding nature, an obiter dictum does not generally constitute error of law or grave abuse of discretion.[40]

WHEREFORE, the instant petition is hereby DISMISSED. Accordingly, the assailed October 28, 2011 and May 9, 2012 Orders of the Regional Trial Court, Branch 47, Manila in Civil Case No. 11-125413 are AFFIRMED.

SO ORDERED.

Villon (Chairperson) and Macalino, JJ., concur.

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[1] Rollo, pages 7-26.

[2] Penned by Presiding Judge Paulino Q. Gallegos, ibid., pages 27-33.

[3] Ibid., pages 34-39.

[4] See letter-endorsement of Philippine Retirement Authority addressed to Bureau of Immigration, ibid., page 238.

[5] Ibid., page 242.

[6] See Certificate of Retiree's Deposit, TD Certificate No. 4000596118 with Bank of Commerce in the amount of $50,000.00, ibid., page 240.

[7] See Writ of Execution in Civil Case No. 186043-CV, ibid., page 88.

[8] Ibid.

[9] Ibid., page 89.

[10] See Notice of Garnishment, ibid., page 148.

[11] Ibid., pages 91-93.

[12] See BOC's September 20, 2010 letter, ibid., page 94.

[13] See MeTC Order dated January 21, 2011 ibid., pages 40-41.

[14] Sec. 8. Secrecy of Foreign Currency Deposits. – All foreign currency deposits authorized under this Act, as amended by Presidential Decree No. 1035, as well as foreign currency deposits authorized under Presidential Decree No. 1034, are hereby declared as and considered of an absolutely confidential nature and, except upon the written permission of the depositor, in no instance shall such foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office, whether judicial or administrative or legislative

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or any other entity whether public or private: Provided, however, that said foreign currency shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.

[15] See MeTC Order dated March 11, 2011, rollo, page 42.

[16] See September 29, 2009 Order of Deputy Commissioner Enrique B. Galang, Jr., Bureau of Immigration, In Re: Subsisting Special Resident Retirees Visa (SRRV) of Guo Shaofu @ Sun Zhenping and his Subsequent Summary Deportation, Chinese National (PROC), ibid., page 250.

[17] See Petition for Certiorari (Special Civil Action under Rule 65) With Application for Writ of Preliminary Injunction and for Temporary Restraining Order, ibid., pages 43-61.

[18] See RTC Order dated April 13, 2011, ibid., pages 177-178.

[19] Supra, at note 2.

[20] Supra, at note 3.

[21] See pages 11-12 of Petition, rollo, pages 13-14.

[22] G.R. No. 94723. August 21, 1997.

[23] Sec. 9. Incentives and Benefits. In order to encourage foreign nationals and overseas Filipinos to participate in the development of retirement villages and other projects of the SYSTEM in the country, the following set of incentives are hereby accorded as follows:

> d. Grant of permanent resident status to foreigners participating or taking up residency under the retirement programs or projects of the SYSTEM through a minimum investment of 50,000 U.S. Dollars in the SYSTEM via a Trust Fund, withdrawable only upon withdrawal from the retirement program of the SYSTEM of the participant concerned. For purposes hereof, the spouse and unmarried children under 21 years of age, of the applicant may also be given permanent resident status, if accompanying or if the following to join him after his admission into the Philippines as a permanent resident. This investment requirement may be increased or decreased by the Board of Trustees upon recommendation of the General Manager;

[24] See Petition, supra, at note 1; and Memorandum for the Petitioner Bank of Commerce, rollo, pages 364-386.

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

[26] See Comment and Memorandum for the Respondent rollo, pages 306-327 and 339-357, respectively.

[27] See October 25, 2012 Resolution, ibid., pages 335-338.

[28] See Barbieto v. Court of Appeals, G.R. No. 184645. October 30, 2009.

[29] See OWWA v. Chavez, G.R. No. 169802. June 8, 2007.

[30] See Australian Professional v. Municipality of Padre Garcia, G.R. No. 183367. March 14, 2012.

[31] See Boncodin v. National Power, G.R. No. 162716. September 27, 2006.

[32] See TML Gasket v. BPI Family, G.R. No. 188768. January 7, 2013, citing Selegna Management v. United Coconut, G.R. No. 165662. May 3, 2006.

[33] See Ocampo v. Sison, G.R. No. 164529. June 19, 2007.

[34] See Manila International v. Powergen, G.R. No. 164299. February 12, 2008.

[35] See Dela Rosa v. Heirs of Valdez, G.R. No. 159101. July 27, 2011.

[36] See Compania General de Tabacos v. Sevandal, G.R. No. 161051. July 23, 2009.

[37] See Borromeo v. Court of Appeals, G.R. No. 169846. March 28, 2008, citing Urbanes v. Court of Appeals, G.R. No. 117964. March 28, 2001.

[38] See Dela Rosa v. Heirs of Valdez, supra at note 35, citing Levi Strauss v. Vogue Traders, G.R. No. 132993. June 29, 2005.

[39] See Land Bank v. Suntay, G.R. No. 188376. December 14, 2011.

[40] See Republic v. Nolasco, G.R. No. 155108. April 27, 2005.

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