

CITY ADVERTISING VENTURES CORPORATION, PLAINTIFF-APPELLEE, VS. METROPOLITAN MANILA DEVELOPMENT AUTHORITY, DEFENDANT-APPELLANT.

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

The defendant-appellant appeals from the Decision[1] of the Regional Trial Court (RTC) which granted the complaint of the plaintiff-appellee for injunction and ordered the defendant-appellant to pay the plaintiff-appellee damages. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff City Advertising Ventures Corporation and against defendant Metropolitan Manila Development Authority:

- GRANTING the Complaint for Injunction enjoining and prohibiting defendant and any of its representatives, employees, officers, agents, assigns and other individuals acting under its instruction from dismantling the commuter stations/passenger waiting sheds and the advertising materials installed or to be installed by plaintiff along the highways and streets of Quezon City, and from preventing plaintiff, any of its representatives, employees, officers, agents, assigns and other individuals acting under its instructions, from installing commuter stations/passenger waiting sheds and advertising materials therein, along the highways and streets of Quezon City, hence, declaring the Preliminary Injunction heretofore issued FINAL and PERMANENT;

- Ordering the defendant to pay plaintiff the amount of P1,440,567.79 as actual damages;

- Ordering defendant to pay plaintiff the amount P200,000.00 as nominal damages;

- Ordering defendant to pay plaintiff the amount of P250,000.00 as exemplary damages;

- Ordering defendant to pay plaintiff the amount of P250,000.00 as temperate damages;

- Ordering defendant to pay plaintiff the amount of P200,000.00 as attorney's fees; and

- Ordering defendant to return to plaintiff the generator, welding set, jack hammer, and other advertising materials it confiscated or to compensate plaintiff if these materials have been lost.

Costs against the defendant."[2]

The material and relevant facts are as follows:

On 22 February 2010, plaintiff-appellee City Advertising Ventures Corporation ("City Advertising") and the City Government of Quezon City entered into a Memorandum of Agreement by virtue of Resolution No. SP-4741, Series of 2009. whereby City Advertising had undertaken to build and refurbish commuter stations or passenger waiting sheds situated within Quezon City. Likewise, City Advertising was allowed under the MOA to install advertising signages therein and collect fees, rentals and charges from the advertisers. In consideration of allowing City Advertising to build, refurbish and operate the subject structures, City Advertising would remit annually five percent (5%) of the collected gross fees, rentals and charges to the Quezon City government.

Within March to May 2010, City Advertising proceeded with the construction and installation of the subject commuter stations or waiting sheds. Thereafter, over the objections of City Advertising, the Metropolitan Manila Development Authority ("MMDA") personnel dismantled and removed the said structures in accordance with the organized bus route project or MMDA Resolution No. 03-28 and Memorandum Circular No. 08.

On 03 June 2010, City Advertising filed a Complaint for Injunction with Damages with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction[3] before the RTC against the defendant-appellant MMDA. On 08 June 2010, the application for the TRO was heard wherein City Advertising presented its witnesses. Via the 10 June 2010 order[4], the RTC granted the application for the issuance of a TRO with its effectivity conditioned upon the posting of a bond in the amount of P500,000.00. Likewise, the hearing on the application for issuance of a writ of preliminary injunction was set. After finding the bond filed by City Advertising to be sufficient and valid, the RTC approved the same and issued the TRO on 15 June 2010.

On 18 June 2010, the Office of the Solicitor General (OSG) filed a Motion for Extension to File Answer.[5] On the same day, Castelo and Associates Law Office (CASO Law) entered its appearance as counsel for MMDA and also moved for an extension of time to file an appropriate pleading[6], which the court granted in an Order dated 22 June 2010.

Meanwhile, the RTC directed the CASO Law to submit its authorization or engagement as counsel for MMDA. The trial court also required the OSG and CASO Law to submit a manifestation as to who between them will represent MMDA. Even so, the OSG was allowed by the trial court an extended period to file its answer to the complaint.[7]

MMDA, through CASO Law, moved for the reconsideration of the orders dated June 10 and 15, 2010 that granted the application and issuance of a TRO. On 05 July 2010, MMDA filed its Answer[8] through CASO Law. It also filed its Compliance[9] with the trial court's directive to submit proof of authority issued by the OSG. In its 08 July 2010 order, the trial court sustained the issuance of the TRO. It also issued an order[10] granting the application for the issuance of a writ of preliminary injunction and required City Advertising to post a bond in the amount of P1,000,000.00. On 13 July 2010, the trial court issued a Writ of Preliminary Injunction[11] enjoining and prohibiting MMDA from dismantling the commuter stations or passenger waiting sheds and the advertising materials installed or to be installed by City Advertising.

Because it was merely CASO Law which filed the answer, City Advertising filed an Omnibus Motion (to Strike Out Pleadings and Declare Defendant in Default)[12]. The MMDA, through CASO Law, opposed the omnibus motion filed by City Advertising and insisted that the counsel appeared for and on behalf of MMDA with authority, through deputation letter[13], from the OSG. After finding that the conditions in the deputation letter have not been satisfied, the trial court nullified the deputation of either CASO Law or Atty. Ruth B. Castelo and declared that CASO Law was not authorized to represent MMDA. The trial court consequently ordered that all the pleadings filed by CASO Law on behalf of MMDA, be stricken off the records and held MMDA in default for its failure to file its answer. Likewise City Advertising was directed to present its evidence ex-parte.[14]

On 20 January 2011, the trial court rendered a decision based on City Advertising's evidence ex-parte. The trial court found that, MMDA's acts of dismantling the commuter stations or passenger waiting sheds and of removing the advertising signages installed therein, violated City Advertising's rights under the Memorandum of Agreement. The trial court saw the necessity to grant City Advertising's prayer for a final and permanent injunction against MMDA. The trial court ratiocinated thus:

"In the instant case, plaintiff was able to establish that it has a clear and unmistakable right to construct and refurbish commuter stations/passenger waiting sheds within Quezon City and to install advertising materials

within these commuter stations/passenger waiting sheds by virtue of the Memorandum of Agreement it entered with the City Government of Quezon City (Exh. "A").

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Defendant MMDA violated plaintiff's rights when its personnel arbitrarily removed and dismantled the passenger waiting sheds and advertising signages installed therein without due process of law.

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The Court wants to emphasize the settled rule that powers granted to the defendant are limited to formulation, coordination, regulation and implementation of existing policies which are purely administrative in nature. Nowhere in the language of its charter, RA No. 7924, was defendant granted police power.

Defendant has no police power or legislative power over and above that of the local government units. Defendant MMDA cannot contradict or diminish the autonomy of local government units. Xxx

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In this case, nowhere in MMDA Resolution No. 03-28 and Memorandum Circular No. 08 was it shown that defendant MMDA was given the authority to dismantle existing waiting sheds or other structures.

Accordingly, defendant has no right to remove the waiting sheds installed by plaintiff and the advertising materials posted therein and those advertising materials posted at the existing waiting sheds plaintiff has rehabilitated or refurbished pursuant to its Memorandum of Agreement with the Quezon City Government.

Moreover, even assuming that defendant had the authority to regulate the use of sidewalks along major roads in all cities and municipalities of Metro Manila and to remove and demolish existing waiting sheds, defendant cannot do so without complying with due process of law."[15]

The OSG belatedly filed a Manifestation and Motion[16] asking the court a quo to reconsider its order of default. The OSG pleaded the trial court to restore MMDA's standing in court and to allow it to present its own evidence. An answer[17] was attached to the manifestation.

The MMDA, through the OSG, also appealed to the Court assailing the issuance of an injunction against MMDA.

The trial court thus held in its 13 September 2012 order as follows:

"WHEREFORE, premises considered, the Manifestation and Motion is deemed mooted and abandoned by defendant's filing of its Notice of Appeal.

Accordingly, the Notice of Appeal filed by defendant is hereby GIVEN DUE COURSE. Send the entire records of this case to the Court of Appeals for purposes of appeal.

SO ORDERED."

In its appeal, MMDA faults the RTC for declaring it in default and for ruling that City Advertising had a clear and unmistakable right to construct and renovate the commuter stations or waiting sheds within Quezon City and to install advertising signages therein.

MMDA assigns the following errors allegedly committed by the court a quo:

"I.

THE COURT A QUO COMMITTED A REVERSIBLE ERROR IN DECLARING DEFENDANT-APPELLANT IN DEFAULT.

II.

THE COURT A QUO COMMITTED A REVERSIBLE ERROR IN DECLARING THAT PLAINTIFF-APPELLEE HAS A CLEAR AND UNMISTAKABLE RIGHT TO RECONSTRUCT AND REFURBISH COMMUTER STATIONS/PASSENGER WAITING SHEDS WITHIN QUEZON CITY BY VIRTUE OF THE MEMORANDUM OF AGREEMENT IT ENTERED WITH THE CITY GOVERNMENT OF QUEZON CITY.

III.

THE COURT A QUO COMMITTED A REVERSIBLE ERROR IN RULING THAT PLAINTIFF-APPELLEE'S RIGHTS WERE VIOLATED WHEN DEFENDANT-APPELLANT REMOVED AND DISMANTLED THE PASSENGER WAITING SHEDS AND ADVERTISING SIGNAGES INSTALLED BY PLAINTIFF-APPELLEE.

IV.

THE COURT A QUO COMMITTED A REVERSIBLE ERROR IN AWARDING DAMAGES TO PLAINTIFF-APPELLEE."

The foregoing assigned errors can be synthesized into four issues, to wit: (a) Does the CASO Law have valid authority to represent MMDA in the civil action for injunction filed by City Advertising against MMDA? (b) Was the MMDA denied due process and deprived of its opportunity to file a responsive pleading to prove its defense? (c) Does City Advertising have the right to construct and refurbish the commuter stations or passenger waiting sheds within Quezon City and (d) Were the acts of MMDA in dismantling the commuter stations or waiting sheds and in removing the signages installed therein a violation of City Advertising's rights under the Memorandum of Agreement?

Before going into the substantive issues in this appeal, we shall address first the procedural matter raised herein. MMDA asserts that the RTC erred when it struck off the records the pleadings filed by its counsel CASO Law on the ground of lack of valid authority to represent it in the case and that consequently, denied it due process.

The assertion has no merit.

The general rule is that only the Solicitor General can bring or defend actions on behalf of the Republic of the Philippines and that actions filed in the name of the Republic, or its agencies and instrumentalities for that matter, if not initiated by the Solicitor General, will be summarily dismissed.[18] The authority of the Office of the Solicitor General to represent the Republic of the Philippines, its agencies and instrumentalities, is embodied under Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987 which provides that:

"SEC. 35. Powers and Functions.—The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party."

The above-quoted provision of the Administrative Code of 1987 imposes upon the Office of the Solicitor General (OSG) the duty to appear as counsel for the Government, its agencies and instrumentalities, or, in this case, the MMDA, before the Supreme Court, the Court of Appeals, and all other courts and tribunals in any litigation, proceeding, investigation or matter requiring the services of a lawyer. The exception, however, is that, the

Solicitor General is empowered to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." [19]

According to the trial court, nothing is stated in the foregoing exception to the effect that a private counsel or law firm may represent an agency or instrumentality of the government like the MMDA. This ruling of the trial court finds support from the conclusion that Section 3 of P.D. No. 478 [20] has been repealed with the passage of the Administrative Code of 1987.

MMDA, however, claims that its counsel of record, CASO Law, was deputized by the Solicitor General to represent it in the case for injunction filed by City Advertising. To prove its assertion, MMDA attached to its Compliance dated 05 July 2010 [21] a photocopy of the purported deputation letter [22] dated 02 July 2010 from the OSG signed by Assistant Solicitor General Amparo Cabotaje-Tang and addressed to Atty. Emmanuel De Castro, Legal Service of MMDA.

A close scrutiny of the said deputation letter from the OSG shows, however, that only Attys. Ruth B. Castelo and Gilbert G. Kintanar were authorized to appear as counsel for the MMDA in the case before the court a quo and not the firm CASO Law. Even on the assumption that the deputation letter from the OSG was intended to authorize CASO Law and to validate or ratify the authority of counsel to represent the MMDA in the case, the same contains certain conditions, one of which is that Attys. Ruth B. Castelo and Gilbert Kintanar "shall submit to the Solicitor General, for review, approval and signature, all important pleadings and motions pertaining to the case, including motions to withdraw appeal, as well as compromise agreements; xxx"

Significantly, some of the major pleadings filed by CASO Law, such as, the Answer [23] to City Advertising's complaint, Motion for Reconsideration [24] (of the Order dated 08 July 2010) and Comment to the Omnibus Motion [25] do not have any indication that the same were previously submitted to the OSG for review or approval, much less do they bear the requisite signature of the Solicitor General as required in the deputation letter.

MMDA asserts that, it was deprived of due process when the RTC ordered the pleadings that were filed by CASO Law, especially the Answer, to be stricken from the records, declared it in default and, consequently, allowed City Advertising to present its evidence ex-parte.

We do not agree with the MMDA.

We revisit the procedural antecedents that led to the issuance of a default order by the court a quo. Both the OSG and the CASO Law entered their respective appearances as counsel for MMDA. In order to avoid confusion on the submissions and position of MMDA, the court a quo clarified the authority of CASO Law to represent MMDA by directing the said law firm to show its engagement as counsel; thus, MMDA was given the opportunity to show proof of CASO Law's authority. Meanwhile, the OSG and CASO Law were aware of the court's directive to file a responsive pleading to the complaint of City Advertising. Aside from that, the OSG had been granted by the court a quo via the order dated 25 June 2010 [26] an extended period of thirty (30) days or until 18 July 2010 to file MMDA's corresponding Answer, yet, the OSG failed to do so without any justification.

The MMDA had been given the opportunity to defend itself through the OSG while CASO Law's authority was still in question. In spite of these indicative developments, MMDA merely relied on the pleadings submitted by CASO Law without ensuring OSG review and approval of the subject pleadings. Of significance is the fact that the trial court received the OSG's manifestation and motion with the attached Answer after the assailed 20 January

2011 order has already been rendered. It took six (6) months before the OSG handled the case. Consequently, it cannot be said that the RTC erred when it held MMDA to be in default pursuant to Section 3, Rule 9 of the Rules of Court.

The foregoing procedural matter addressed, we now delve into the substantive issues. Ultimately the controversy boils down to the propriety of the issuance of the injunctive writ against MMDA. MMDA contends that City Advertising has no clear and unmistakable right to construct and refurbish commuter stations or waiting sheds within the area of Quezon City based on the following grounds: (a) the MOA that was entered into between the Quezon City government and City Advertising is void ab initio because the subject matter of the said contract is beyond the commerce of man; (b) the MOA does not comply with the requirements of Republic Act (R.A.) No. 6957, as amended by R.A. No. 7718 or "The Build, Operate and Transfer Law" and (c) regardless of the MOA's validity, City Advertising failed to secure the required clearances and permits from the appropriate government agencies for the establishment of the subject commuter stations or passenger waiting sheds.

The argument is worth noting.

But a ruling that upholds the validity of the trial court's default order against MMDA does not necessarily lead to a conclusion that City Advertising should automatically be awarded the reliefs it prayed for in its complaint for injunction and damages.

Section 3, Rule 58 of the Rules of Court, provides the grounds to support the issuance of a preliminary injunction:

"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.

As the plaintiff in a complaint for injunction, it is incumbent upon City Advertising to show that: (1) it has a clear legal right or a "clear and unmistakable right"; (2) such right has been violated and the invasion by the other party is material and substantial; and (3) there is an urgent or permanent necessity for the writ to prevent serious damage.[27] "Clear legal right" within the meaning of Rule 58 contemplates a right clearly founded on or granted by law.[28] Any hint of doubt or dispute on the asserted legal right precludes the grant of preliminary injunctive relief.[29]

City Advertising categorically claims that its right to build and refurbish the subject commuter stations or passenger waiting sheds and to install advertising signages therein emanates from the MOA that it entered into with the Quezon City government. As a contract, the MOA is the law between the parties and its stipulations are binding on them.[30] From this viewpoint, let us examine if City Advertising has a clear legal right that was violated by MMDA.

The MOA expressly provides under its Article I, the duties and responsibilities of both the Quezon City government and City Advertising. These provisions, both contracting parties are bound to comply with. We quote hereunder one of the pertinent duties and responsibilities of City Advertising:

"4. Shall comply with the Building Code requirements including securing the required clearances and permits from appropriate government agencies and utility agencies for the establishment of the said commuter stations/passenger waiting sheds;"[31]

By an expressed provision, the MOA imposed upon City Advertising an obligation to obtain the necessary permits and clearances before the construction and renovation of the subject commuter stations or waiting sheds. City Advertising is the active participant of the parties which is duty-bound to fulfill the said obligation. Upon the other hand, there is nothing in the terms of the MOA that directs or allows City Advertising to build and renovate, at once, the subject commuter stations or waiting sheds upon the signing of the MOA.

During the hearing on the application for the issuance of a writ of preliminary injunction, City Advertising presented the testimony of its Vice President for Sales and Operation Hospicio G. Neri, Jr. When cross-examined, the witness was evasive and could not categorically say that City Advertising was able to secure the permits and clearances referred to in the MOA. He testified, thus:

"CROSS EXAMINATION BY ATTY. CASTELO:

Q:

Okay, thank you, Your Honor. (to the witness) Mr. witness, before you install the waiting sheds on the sidewalks, did you comply with the requirements of law?

A:

We were given a permit by the Quezon City Government.

Q:

And do you have with you the permit, Mr. witness?

A:

It's in the MOA. The MOA is the permit itself.

Q:

Is that correct, Mr. witness?

A:

Under the MOA, they authorize us to install waiting sheds within the jurisdiction of Quezon City.

Q:

Okay, Mr. witness, but did you clarify it with the City Government? Did they say that the MOA was permit for you to install waiting sheds?

A:

There was no clarification.

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Q:

Oh yes, Mr. witness, but the MOA says that you are under obligation to secure permits and comply with the requirements of the Building Code. Is that correct?

A:

Yes.

Q:

Yes. So, did you comply with the requirements of the Building Code, Mr. witness?

A:

I don't know.

Q:

Yes or no, Mr. witness?

A:

Not yet.

Q:

Okay. Mr. witness, are you also aware, being in the outdoor advertising business, are you aware of the Outdoor Advertising Code of the Philippines considering that the MOA also mentioned about it? It's the Advertising Industry Code. Are you aware of it, Mr. witness?

A:

I'm familiar with some of the code but not the entire code. I cannot memorize that.

Q:

Okay. Since the MOA, Mr. witness, mentioned about that code, I am informing you now that that code also says that outdoor advertisers should comply with National Laws, specifically with the National Building Code. I'm telling you now, for your information, did you comply with that requirement, Mr. witness?

A:

I do not have knowledge of that.[32]

City Advertising's Operations Assistant Sonny Sabanal Palmon also testified on the matter of the clearances and permits mentioned in the MOA, thus:

"CROSS EXAMINATION BY ATTY. VARGAS:

Q:

Mr. witness, you are telling this Honorable Court that the only requirement in the installation of a waiting shed is the Memorandum of Agreement executed by City Ads and by the Local Government of Quezon City. Is that correct?

A:

Yun po. Yun po ang dala namin.

Q:

That is the only permit that you hold when you install a waiting shed. Is that correct, Mr. witness?

A:

Yes, sir.

Q:

Alright. Mr. witness, are you aware of - during your experience, Mr. witness, of all the waiting sheds that you installed, the only permit that you got or the only permit that you used is the MOA with the local government. Is that correct?

A:

Yes, sir.

Q:

Alright. Mr. witness, are you aware of any requirement – you do not seek the permission of the DPWH when you install, Mr. witness, waiting sheds. Is that correct?

A:

Yes, sir.

Q:

Alright. You do not also seek the permit of the building officials of the local government when you build or when you install waiting sheds. Is that correct, Mr. witness?

A:

Building officials, meron po kaming mga signage permit.

Q:

Yeah. I am talking about the waiting sheds, Mr. witness.

A:

None, sir. Only the MOA."^[33]

Based on the foregoing testimonies of City Advertising's personnel, it can be inferred that City Advertising did not comply with its obligation under the MOA because it failed to secure the necessary permits and clearances from the appropriate government agencies. Further, a perusal of the records of the case reveals that, no single evidence was adduced by City Advertising to show that it complied with the said mandatory and conditional provision of the MOA, which was, for it to obtain clearances and permits from the appropriate government agencies for the construction and renovation of the commuter stations or waiting sheds.

City Advertising's complaint for injunction against MMDA is therefore weighed down by its failure to show that, it had a "clear legal right", that is, a right clearly founded on or granted by law. Accordingly, it is reasonable to conclude that, there is, at least, a doubt or dispute about City Advertising's asserted right. Thus, the RTC's issuance of the writ of preliminary injunction and the subsequent declaration that the same be final and permanent, do not stand on stable ground.

Apart from the injunctive relief sought against MMDA, City Advertising also claimed compensation for the expenses that it had incurred in the installation and refurbishment of the subject commuter stations or passenger waiting sheds. City Advertising further claimed that MMDA should be held liable for damages for the pecuniary loss that it would sustain from the lost opportunities and for the consequential besmirched reputation and goodwill that they had suffered. These claims were found by the court a quo to be with sufficient bases. We therefore also

look into the propriety of the award of damages and attorney's fees in favor of City Advertising.

We find the awards of actual and nominal damages to be with factual and legal bases while the awards of temperate and exemplary damages as well as attorney's fees are unfounded.

It is undisputed that City Advertising incurred expenses for the costs of materials, labor, equipment rental and trucking services for the construction and repairs of the subject commuter stations or passenger waiting sheds and installation of advertising signages therein. To support its claim for actual damages, City Advertising offered in evidence the receipts^[34] of payments made to its materials suppliers, service and manpower providers which amounted to P1,440,567.79. Upon a perusal of the receipts, it can be reasonably inferred that City Advertising had been able to show competent proof of the actual amount of loss because of the removal of the subject structures by MMDA. Indubitably, credence can be given to City Advertising's claim to be compensated for such amount of actual loss or damage.

Nominal damages were also properly awarded by the court a quo in favor of City Advertising. The trial court deemed it appropriate to vindicate or recognize the proprietary rights of City Advertising that had been violated or invaded by MMDA when the latter removed and demolished the subject commuter stations and waiting sheds without due notice to City Advertising. City Advertising may not have the "clear legal right" to be entitled to an injunctive relief, but, in view of the Memorandum of Agreement, City Advertising, at least, acted under some color of right to build and refurbish the subject commuter stations or waiting sheds pursuant to their own design and specifications per its MOA with the Quezon City local government. It is futile for MMDA to simply invoke its legal mandate to justify the summary dismantling of the subject structures located within Quezon City. In various cases, the Supreme Court had the occasion to rule that MMDA's powers were limited to formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installing a system, and administration. Nothing in Republic Act No. 7924^[35] granted MMDA police power, let alone legislative power.^[36] Its charter also characterizes its function as administrative in nature, thus:

"Sec. 2. Creation of the Metropolitan Manila Development Authority.- xxx.

The MMDA shall perform planning, monitoring and coordinative functions, and in the process exercise regulatory and supervisory authority over the delivery of metro-wide services within Metro Manila, without diminution of the autonomy of local government units concerning purely local matters."

Nowhere in the law can it be found an authority or power that allows MMDA to demolish or dismantle, without notice, the said structures especially that these commuter stations or waiting sheds are not considered nuisance per se. If at all, it is the local government concerned, in this case Quezon City, that has the power and authority to summarily abate public nuisance. Certainly not the MMDA. Though the erection of the said structures may not be in conformity with the Metro Manila Council Resolution No. 03-28 or the Organized Bus Route (OBR) project implemented by the MMDA, the removal of the said structures ought to be conducted in accordance with due process. The excuse proffered by the MMDA personnel that they did not know to whom the notice to remove the structures would be addressed, is specious. Given that the said structures had been erected within the jurisdiction of Quezon City and the existing ones were owned by the said local government unit (LGU), the MMDA could have simply inquired from the office of the said LGU who the builder and operator of these structures were and where they could be located. Indubitably, MMDA was remiss in its duty to observe due process when it summarily dismantled and removed the structures that were said to be non-compliant with the OBR project. MMDA appeared oblivious of RA No. 7924's declared policy that respects the autonomy of the affected LGUs and that the implementation of MMDA programs and projects were subject to prior coordination with and consent of the LGUs concerned.^[37]

Given the foregoing circumstances, the award of nominal damages to City Advertising is justified because of the sudden, arbitrary removal and dismantling of the subject commuter stations or waiting sheds as well as of the advertising signages therein.

Anent the temperate and exemplary damages adjudicated in favor of City Advertising, the circumstances of the case and the evidence on record do not show that City Advertising is entitled to such awards.

Temperate damages "may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty." [38] But, before an estimate of this pecuniary loss can be arrived at, there must be a factual basis that exists. The purported, unearned revenue that City Advertising allegedly stood to suffer, was not sufficiently proven. Firstly, City Advertising failed to allege who were these clients who committed to engage its services to install advertising signages in the said commuter stations or waiting sheds. Secondly, there is nothing on record to show that City Advertising has already suffered such pecuniary loss. Lastly, City Advertising merely showed potential or possible clients [39] to whom they submitted their rates or quotations for advertising rental charges. It is worth noting that these clients appear to be merely potential ones and that none of them had confirmed their acceptance of City Advertising's offer. Nothing had been submitted by City Advertising to show that it has entered into a contract or any undertaking with a client and which contract or undertaking may be said to have been breached or violated.

MMDA, as a development authority, is tasked to regulate the implementation of all programs and projects concerning traffic management specifically pertaining to enforcement, engineering and education. Because MMDA was carrying out its perceived duties and responsibilities when it summarily removed and dismantled the commuter stations or waiting sheds, although it failed to issue the proper notice to City Advertising, we do not view these acts as tantamount to bad faith on the part of MMDA. Thus, exemplary damages would not be recoverable against it.

City Advertising is likewise not entitled to attorney's fees. The settled rule is that no premium should be placed on the right to litigate and that not every winning party is entitled to an automatic grant of attorney's fees. [40] The MMDA was not acting in gross and evident bad faith when it refused to cease from removing or dismantling the structures built and refurbished by City Advertising. On the one hand, City Advertising failed to demonstrate that, it had a clear legal right to be entitled to an injunctive relief, while on the other hand, MMDA merely implemented the OBR project in line with its traffic management operations in Metro Manila. Thus, we similarly see no ample basis for the award of attorney's fees.

WHEREFORE, the appeal is PARTIALLY GRANTED. The assailed decision of 20 January 2011 is MODIFIED, such that the grant of a permanent injunctive relief is VACATED and SET ASIDE; the award of actual and nominal damages in the amount of P1,440,567.79 and P200,000.00, respectively are sustained. Likewise, MMDA is directed to return to City Advertising the generator, welding set and jack hammer that it had confiscated in the course of the removal of the subject structures. Further, the award of actual and nominal damages shall earn interest at six percent (6%) per annum from the finality of the decision until fully paid.

IT IS SO ORDERED.

Reyes, Jr., (Chairperson), and Gaerlan, JJ., concur.

[1] Written by Presiding Judge Oscar B. Pimentel, RTC, Branch 148 of Makati City in Civil Case No. 10-546, Record, Vol. 3, p. 973.

- [2] Record, Vol. 3, p. 985-986.
- [3] Record, Vol. 1, p. 1.
- [4] Record, Vol. 1, p. 177.
- [5] Record, Vol. 1, p. 206.
- [6] Record, Vol. 1, p. 196.
- [7] Order dated 25 June 2010, Record, Vol. 1, p. 211.
- [8] Record, Vol. 2, p. 591.
- [9] Record, Vol. 2, p. 526.
- [10] Dated 08 July 2010, Record, Vol. 2, p. 583.
- [11] Record, Vol. 2, p. 715.
- [12] Record, Vol. 2, p. 727.
- [13] Record, Vol. 2, p. 528.
- [14] Order dated 06 December 2010, Record, Vol. 2, p. 855.
- [15] Record, Vol. 3, pp. 978-982.
- [16] Record, Vol. 3, pp. 987 and 1015.
- [17] Record, Vol. 3, pp. 995 and 1022.
- [18] Cooperative Development Authority vs. Dolefil Agrarian Reform Beneficiaries Cooperative, Inc., et al., GR No. 137489, 29 May 2002, 432 Phil. 290.
- [19] Section 35(8), Chapter 12, Title III, Book IV of the Administrative Code of 1987
- [20] "Defining the Powers and Functions of the Office of the Solicitor General", Approved on 04 June 1974.
- [21] Supra note 9.
- [22] Record, Vol. 2, p. 528.
- [23] Supra note 8.
- [24] Record, Vol. 2, p. 771.
- [25] Record, Vol. 2, p. 842.
- [26] Supra note 7.
- [27] Semirara Coal Corporation vs. HGL Development Corporation, GR No. 166854, 06 December 2006, 539 Phil. 532, 545; De la Cruz vs. Department of Education, Culture and Sports-Cordillera Administrative Region, GR No. 146739, 16 January 2004, 464 Phil. 1033, 1052; and Gateway Electronics Corporation vs. Land Bank of the Philippines, GR No. 155217, 30 July 2003, 455 Phil. 196, 210.
- [28] Boncodin vs. National Power Corporation Employees Consolidated Union (NECU), GR No. 162716, 27 September 2006, 534 Phil. 741, 754.

- [29] Spouses Arcega vs. Court of Appeals, GR No. 122206, 07 July 1997, 341 Phil. 166.
- [30] Mendiola vs. Commerz Trading Int'l, Inc., GR No. 200895, 31 July 2013.
- [31] Exh. "A.3", Record, Vol. 1, p. 22.
- [32] TSN, Hospicio G. Neri, Jr., 01 July 2010, pp. 32-38 or Record, Vol. 1, pp. 301-307.
- [33] TSN, Sonny Sabanal Palmon, 08 June 2010, pp. 60-62 or Record, Vol. 1, pp. 134-136.
- [34] Marked as Annexes "A-1"to "A-25" or Exhibits "F-1"to "F-25", Record, Vol. 3, pp. 932-962.
- [35] An Act Creating the Metropolitan Manila Development Authority, Defining its Powers and Functions, Providing Funding Therefor and for other Purposes.
- [36] MMDA vs. Bel-Air Village Association, Inc., GR No. 135962, 27 March 2000, 328 SCRA 836; MMDA vs. Viron Transportation Co., Inc., GR Nos. 170656 and 170657, 15 August 2007, 530 SCRA 341; MMDA vs. Garin, GR No. 130230, 15 April 2005, 456 SCRA 176.
- [37] See Sections 1 and 5 of RA No. 7924.
- [38] Article 2224 of the New Civil Code.
- [39] See Annexes "B" and "C", Record, Vol. 3, pp. 964-966.
- [40] First Lepanto-Taisho Insurance Corp. (now known as FLT Prime Insurance Corporation) vs. Chevron Philippines, Inc. (formerly known as Caltex Philippines, Inc.), GR No. 177839, 18 January 2012, 663 SCRA 309.

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