

**FAST TRUCKING INC., AND DANNY BOY MALDIGAN, PETITIONERS,
VS. HON. EVALYN M. ARELLANO-MORALES IN HER CAPACITY AS
THE PRESIDING JUDGE OF BRANCH 17, REGIONAL TRIAL COURT,
DAVAO CIT...**

Ponente: PEREZ, J.

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PEREZ, J.:

On 14 August 2014 petitioners filed this Petition for Certiorari with Prayer for Preliminary Injunction, Injunction Proper[1] before this Court seeking to annul the 13 May 2014 Order[2] issued by public respondent judge in Civil Case No. 34393-12 denying petitioners' motion to disqualify private respondent Federico B. Amparo (Amparo) as indigent litigant and to dismiss his complaint for non-payment of docket fees, as well as the 02 July 2014 Order[3] denying petitioners' motion for reconsideration on the previous order.

The resolution on the prayer for issuance of a writ of preliminary injunction was held in abeyance pending the compliance by the parties to Our directives as stated in a Minute Resolution[4] dated 02 September 2014, directing petitioners to rectify infirmities in its petition and for private respondents to file, a Comment on the Petition and to show cause why the prayer for injunctive relief should not be granted, to which petitioners may file a Reply.

Accordingly, on 30 September 2014, petitioners' filed their Compliance[5] to the abovementioned directive, which is duly noted by this court.

Likewise, We note Private Respondent's Comment on the Petition and Shown Causes for Denial of Injunctive Reliefs[6] filed by private respondent Federic B. Amparo on 13 October 2014, to which petitioners failed to file a Reply as shown by records. With this, We deem petitioners to have waived their right to file their Reply.

As to private respondent Federal Phoenix Assurance, Inc., nothing on the records shows that it has filed its Comment as of 12 January 2015, thus, We deem its right to file a comment as also waived.

With the filing of Private Respondent's Comment on the Petition and Shown Causes for Denial of Injunctive Reliefs filed by private respondent Amparo, We now resolve the petitioners' prayer for a writ of preliminary injunction.

In this case, private respondent was allowed by the lower court to litigate his civil action[7] for claims exceeding two million pesos against petitioners as indigent litigant. Thus, he was allowed to file his complaint without paying the corresponding docket fees at the time of filing but constituting a lien on way of judgment favorable to him.

Upon learning that private respondent Amparo was capable of paying his private counsel one thousand pesos every court appearance, petitioners moved to disqualify the former as indigent litigant and for the dismissal of the civil suit for non-payment of docket fees.[8]

On 13 May 2014, the lower court issued the assailed Order denying the motion to dismiss on the ground of non-payment of docket fees. On 23 May 2014 petitioners moved to reconsider the said Order, which was subsequently denied by the court.

According to petitioners, the continuation of the hearing of this case before the lower court would result in substantial and irreparable damage and injury on their part pending the resolution of the petition for certiorari, hence the prayer for the issuance of the writ of preliminary injunction.[9]

We disagree.

Section 3, Rule 58 of the Rules of Court provides that:

“Section 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. (3a)”

In the case of *Thunder Security and Investigation Agency v. National Food Authority (Region I)*,^[10] the Supreme Court laid down the following requisites that must be proven before a writ of preliminary injunction will issue, to wit:

- “(1) The applicant must have a clear and unmistakable right to be protected, that is a right in esse;
- (2) There is a material and substantial invasion of such right;
- (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and
- (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury”

Here, petitioners failed to clearly establish the right that is violated by the lower court in continuing the hearing of this case pending the outcome of this petition for certiorari. There is no allegation that they are prejudiced in anyway by the lower court’s action. To disqualify a party litigant as indigent is definitely not a clear and unequivocal right belonging to petitioners. Such absence of clear right is made more pronounced by the factual finding of the trial court that the private respondent Amparo has qualified himself to sue as indigent, which reads:

“The records would readily bear that in the Order dated March 7, 2012, the Court had resolved to grant plaintiffs prayer to litigate as an indigent in this case, as he had complied with the requirements in the guidelines for him to qualify as an indigent litigant.”^[11]

Petitioners also failed to establish the irreparable injury to be caused them if private respondent is allowed to maintain his suit. Damages are irreparable within the meaning of the rule relative to the issuance of injunction when there is no standard by which there amount can be measured with reasonable accuracy.^[12] Here, the amount of the unpaid filing fees due to the government is easily determinable and under both the assailed orders and the explicit term of Rule 141, Section 19 shall be a lien on any judgment resolved in the case favorable to the indigent litigant.

IN VIEW OF THE FOREGOING, petitioners' application for a writ of preliminary injunction is hereby DENIED.

The parties are DIRECTED to file their respective memoranda simultaneously within fifteen (15) days from receipt of notice in order to better amplify their respective positions on the issues involved in the case at bar. After which, the petition shall be deemed submitted for resolution.

SO ORDERED.

Camello, J., Chairperson, and Perez, JJ., concur.

[1] Rollo, pp. 2-13.

[2] Rollo, pp. 15a-17.

[3] Rollo, p. 18.

[4] Rollo, p. 52.

[5] Rollo, p. 53.

[6] Rollo, p. 57.

[7] Rollo, pp. 26-32.

[8] Rollo, pp. 34-36.

[9] Rollo, pp. 10-11.

[10] G.R. No. 182042, 27 July 2011

[11] Rollo, p. 16.

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

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