

**PILAR DEVELOPMENT CORPORATION, PETITIONER, VS.
HONORABLE ELIZABETH YU GURAY, PRESIDING JUDGE, REGIONAL
TRIAL COURT, BRANCH 202, LAS PIÑAS CITY, LAS PIÑAS CABLE TV,
INC. AND CABL...**

CA-G.R. SP NO. 103086, June 16, 2010

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Court of Appeals

Before Us is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure filed by Petitioner Pilar Development Corporation (hereinafter Petitioner) assailing the Order (Rollo, pp. 14-20) dated December 11, 2007 of the Regional Trial Court (RTC), Branch 202 of Las Piñas City, and its subsequent Order (Rollo, pp. 21-25) dated February 15, 2008 denying the Petitioner's motion for reconsideration.

The antecedents:

In a petition (Rollo, pp. 26-37) dated October 30, 2007 for "Injunction and Damages with Prayer for Preliminary Injunction or Restraining Order," filed against Petitioner and Pilar Village Homeowners Association, Inc. (PVHAI for brevity), private Respondents Las Piñas Cable TV, Inc. and Cable Link & Holdings, Inc. (hereinafter Respondents) alleged that sometime in July 2007 PVHAI required them to first secure a business permit fee of P10,000.00 per year plus P40.00 entry fee per entry of its service vehicles to Pilar Village or in lieu thereof, an annual pass of P1,000.00 per vehicle, for them to be allowed to continue their business operations within the village. They further alleged that due to their refusal to PVHAI's demand, the latter, its officers, employees, agents and security guards prevented them from continuing with their business operations by not allowing their service vehicles to enter the premises of Pilar Village. They likewise averred in their petition that earlier sometime in June 2004, Petitioner tried to control their business operations within the subdivision by allegedly forcing them to dismantle their cable lines within Pilar Village and to vacate all areas where such cable lines were installed.

Finding the application for temporary restraining order (TRO) as meritorious, the Executive Judge of the RTC of Las Piñas City per Order (Rollo, pp. 38-40) dated November 6, 2007 issued a 72-hour TRO against Petitioner, PVHAI and the latter's officers, employees, agents, representative, security guards and all other persons acting under them or under their direction.

Thereafter, the case was set for special raffle and was raffled off to Branch 202. The case was set for hearing on November 12, 2007.

In its Order (Rollo, pp. 48-49) dated November 12, 2007, the RTC extended the 72-hour TRO for twenty (20) days, inclusive of the 72-hour period previously granted. In the same Order, the hearing on the prayer for the issuance of a writ of prohibitory injunction was set on November 22, 2007 and November 28, 2007. Petitioner and PVHAI were directed to show cause why the said application should not be granted.

On December 11, 2007, the RTC issued the Order, *supra*, granting the prayer for the issuance of a writ of preliminary prohibitory injunction, the dispositive portion of which reads:

"WHEREFORE, finding petitioners' prayer for issuance of writ of preliminary prohibitory injunction, proper and supported by evidence, the same is hereby GRANTED.

Accordingly, respondents are hereby directed to maintain the status quo and to allow and permit the entry of petitioners' service vehicles, employees and linemen to Pilar Village, or otherwise disabling the normal operation and activities of the cable television network system of petitioners and to cease and desist from demanding or assessing, charging or levying and collecting from petitioners a "business permit fee" or any fee in connection with its operations inside the Pilar Village Subdivision, or any other subdivision developed or under the management, administration or control of respondent Pilar Development Corporation in Las Piñas City, wherein petitioners are operating or may operate; and/or from committing any act adverse to petitioners' interest or directed against its cable TV network, personnel, vehicles, equipment or properties, pending the resolution of the above-captioned case.

Further, pursuant to Rule 58, Section 4 of the Revised Rules of Court, petitioners are hereby required to post a bond in the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) either in cash or undertaken by a qualified and duly accredited bonding surety company, with sufficient qualification and amount, as maybe approved by this Court, to answer to any such damages, respondents will suffer, by reason of the issuance of the writ of preliminary prohibitory injunction prayed for, if petitioners are found not entitled to its issuance.

SO ORDERED." (Rollo, p. 20)

Petitioner and PVHAI separately sought reconsideration from the aforequoted Order which were both denied per the RTC's Order dated February 15, 2008, supra.

Hence, the instant petition anchored on the sole ground-

"THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ISSUING THE WRIT OF PROHIBITORY INJUNCTION WHEN THE PRIVATE RESPONDENTS FAILED TO SHOW THEIR ENTITLEMENT THERETO." (Rollo, p. 6)

Section 1, Rule 58 of the 1997 Rules of Civil Procedure defines a preliminary injunction as an order granted at any stage of an action prior to the judgment or final order requiring a party or a court, an agency or a person to refrain from a particular act or acts. The grounds for the issuance of a writ of preliminary injunction as enumerated under Section 3, Rule 58 of the 1997 Rules of Civil Procedure are as follows:

"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."

Thus, an injunctive writ may be issued when the following requisites are established:

1. The invasion of the right is material and substantial;
2. The right of complainant is clear and unmistakable;

3. There is an urgent and permanent necessity for the writ to prevent serious damage. (Almeida vs. Court of Appeals, 448 SCRA 681, 694 [2005])

At the outset, it must be stressed that the grant or denial of a preliminary injunction is discretionary on the part of the trial court. (Philippine Ports Authority vs. Pier 8 Arrastre & Stevedoring Services, Inc., 475 SCRA 426, 441 [2005]) Thus, the rule that the matter of the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court, unless the court commits grave abuse of discretion. (Overseas Workers Welfare Administration vs. Chavez, 524 SCRA 451, 471 [2007]) In granting or denying injunctive relief, a court abuses its discretion when it lacks jurisdiction, fails to consider and make a record of the factors relevant to its determination, relies on clearly erroneous factual findings, considers clearly irrelevant or improper factors, clearly gives too much weight to one factor, relies on erroneous conclusions of law or equity or misapplies its factual or legal conclusions. (Almeida vs. Court of Appeals, supra, p. 695) Also, in the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. (Ibid.)

In deciding whether to grant an injunction, a court must consider established principles of equity and all the circumstances of the case. (Almeida vs. Court of Appeals, supra, p. 695) The test for issuing an injunction is whether the facts show a necessity for the intervention of equity in order to protect rights cognizable in equity. (Ibid.)

In the instant case, We find no grave abuse of discretion on the part of the RTC when it issued the writ of preliminary prohibitory injunction.

Foremost, Respondents were able to show a clear and unmistakable right to warrant their entitlement to the writ. On September 18, 2007, Respondents' lineman in the name of Robert Berzamina was prevented from entering Pillar Village. The lineman was there to perform a service job order for a subscriber. On another occasion or on October 17, 2007, Respondents' linemen Jeffrey T. Reyes, Joel P. Dizon and Jesus Quibuyen were likewise denied entry. Respondents sent said linemen to service the needs of their subscribers in Pilar Village. Verily, Respondents have a clear and positive right which called for a judicial protection. If the acts of preventing the entry of Respondents' service vehicles will not be restrained, this would cause damage and injury to Respondents.

The RTC likewise conducted hearings before the writ of preliminary injunction was issued which afforded the RTC the opportunity to judiciously review and evaluate the arguments of both parties as well as the pieces of evidence adduced therein. On this score, We find as instructive the ruling of the Supreme Court in Overseas Workers Welfare Administration v. Chavez (524 SCRA 451, 470 [2007]), thus:

x x x A writ of preliminary injunction is generally based solely on initial and incomplete evidence. The evidence submitted during the hearing on an application for a writ of preliminary injunction is not conclusive or complete for only a "sampling" is needed to give the trial court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. In fact, the evidence required to justify the issuance of a writ of preliminary injunction in the hearing thereon need not be conclusive or complete, x x x"

It bears emphasis that appellate courts refrain from reviewing factual assessments of lower courts and agencies exercising adjudicative functions in petitions under Rule 65 of the Rules of Court. (Abad vs. Roselle Cinema, 485 SCRA 262, 267 [2006]) In petitions for certiorari under the said rule, only jurisdictional issues may be raised, as when the court or tribunal has acted "without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction." (Aquino vs. Court of Appeals, 502 SCRA 76, 85 [2006])

It must also be stressed that it does not necessarily proceed that when a writ of preliminary injunction is issued, a final injunction will follow. (Overseas Workers Welfare Administration v. Chavez, supra, p. 470)

Besides, the doctrine of res judicata invoked by the Petitioner is misplaced. The four elements of res judicata are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be between the first and second action, identity of parties, subject matter and causes of action. (Heirs of Maglaque vs. Court of Appeals, 524 SCRA 234, 240 [2007])

In invoking res judicata, Petitioner cited the case of Armando Merilleno CATV Systems, Inc. vs. Sye Bongar (CA-G. R. SP No. 66965) promulgated on January 31, 2002 which became final and executory on February 22, 2002. A reading, however, of said case revealed that there is no identity of parties between the said case and the instant case. In the Merilleno CATV Systems case, the Respondent was Sye Bongar, in his capacity as then president of PVHAI while in the present case, the petition was filed against PVHAI itself and Petitioner, which are both juridical entities.

There is likewise no identity of subject matter as well as causes of action. In the Merilleno CATV Systems case, the writ sought was that of mandamus so as to compel Sye Bongar to issue a permit to enable therein petitioner to proceed with the installation of cable wiring/system within Pilar Village. On the other hand, the instant case is for injunction to restrain the prohibition on the entry of Respondents' employees, agents and service vehicles.

In fine, there is nothing in the records much less in the challenged Orders which would indicate that the RTC acted with grave abuse of its discretion. Far from it, the questioned Orders show that the RTC judiciously addressed the propriety of the issuance of the writ of preliminary prohibitory injunction. After all, grave abuse of discretion implies a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion of positive duty enjoined or to act at all in contemplation of law. (Machica, et al. vs. Roosevelt Services Center, Inc., et al., 489 SCRA 534, 547 [2006]) Thus, We see no reason to nullify the challenged Orders.

WHEREFORE, premises considered, the instant petition is DENIED. The challenged Orders of the Regional Trial Court (RTC), Branch 202 of Las Piñas City dated December 11, 2007 and February 15, 2008 STAND.

SO ORDERED.

Villamor and Ybañez,[*] JJ., concur

[*] Acting Junior Member per Office Order No. 144-10-ABR dated June 8, 2010.

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