

HEIRS OF TOMAS MARTINEZ, NAMELY: DULCE MARTINEZ, ROY MARTINEZ, RAUL MARTINEZ, CARMELITA MARTINEZ, ALEX MARTINEZ, AND ED MARTINEZ, PETITIONERS, VS. HONORABLE ROWENA APAO-ADLAWAN,...

Ponente: CONTRERAS, J.

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CONTRERAS, J.:

For Our resolution is petitioner's prayer for issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction (WPI).

The instant petition stemmed from Civil Case No. 30, 218-2004 for Recovery of Possession, Damages, & Attorney's Fees with Prayer for a Writ of Preliminary Attachment (recovery of possession) filed by Kaunlaran Development Corporation (private respondent) before the Regional Trial Court (RTC), Branch 13, Davao City against Tomas Martinez (Tomas). Private respondent claimed that Tomas had been occupying subject lot without its authority and consent. Tomas, on the other hand, insisted that he came to Davao City way back in 1937 and built a house on the subject lot; that after the Second World War, the Tiongco family claimed the subject lot; that Tomas stayed on subject lot and began paying rentals in 1969 to the Tiongco family; that no fixed period of lease was agreed upon; that the subject property was sold to private respondent in 1978; that Tomas continued to pay rentals directly to private respondent; that from 1991 until about 2004,[1] Tomas paid rentals through consignment in court.

On July 12, 2011, the RTC dismissed[2] the case for recovery of possession and at the same time, fixed the period of lease between petitioner and Tomas to two (2) years to expire on July 12, 2014. Private respondent filed a notice of appeal but withdrew it later. Tomas did not appeal the decision. Eventually, private respondent moved for execution but Tomas opposed the same. Initially, the motion for issuance of writ of execution was denied. Upon private respondent's motion for reconsideration, however, the RTC reversed its own denial and ordered the issuance of a writ of execution. In an Order dated February 14, 2014, the RTC denied Tomas' motion for reconsideration. A notice of appeal was thereafter filed on the denial of the motion for reconsideration. Subsequently, a writ of execution was issued, followed by the issuance of a Sheriff's Notice to Vacate against petitioners. Then, separate orders were rendered by the RTC denying Tomas' notice of appeal and motion for reconsideration.

Hence, this petition for certiorari, with prayer for issuance of a TRO and/or WPI.

We are inclined to deny petitioners' prayer for injunctive relief.

To authorize a temporary injunction, the petitioner must at least make out a prima facie showing of a right to the final relief. Preliminary injunction will not issue to protect a right not in esse.[3] It bears to stress that the injunctive writ is conditioned on the existence of a clear and positive right of the applicant which should be protected; the writ must be used with extreme caution, affecting as it does the respective rights of the parties.[4]

In fine, the writ should be granted only when the court is fully satisfied that the law permits it and the emergency demands it, for the very foundation of the jurisdiction to issue writ of injunction rests in the existence of a cause of action, probability of irreparable injury, inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits. Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.[5]

Thus, to be entitled to the injunctive writ, petitioners must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[6]

Petitioners in the instant case failed to establish the existence of an actual, clear, and unmistakable right to be protected by the injunctive writs.

Settled is the rule that an execution of a final judgment is a matter of right on the part of the prevailing party whose implementation is mandatory and ministerial on the court or tribunal issuing the judgment.[7] In the instant case, the RTC had in fact issued a writ of execution in favor of private respondent and the sheriff released a notice demanding petitioners to vacate. But, petitioners refused to vacate. This prompted private respondent to moved for issuance of an order of demolition against petitioners.

Now, petitioners come to this Court via the instant petition, alleging, for the first time, in support for the prayer for issuance of a TRO and/or WPI, that the improvement (house) introduced by their father Tomas on the subject property is a “family home.” Petitioners thus pray for issuance of injunctive writs to prevent the RTC from further issuing an order demolishing their family home without indemnifying them. They allege that they have constituted and lived their family home for a very long time and, unless a TRO and/or WPI is issued to enjoin the court a quo from issuing an order of demolition, there is an imminent danger that they will become homeless.

We consider petitioners’ claim of “family home” a clear-cut ploy to forestall the implementation of the RTC’s final and executory decision. The claim has no leg to stand on. At the outset, there is no showing in the records that the house built by Tomas on the subject property is a family home. The house may have been constituted a family residence but it cannot be legally considered a family home. For a family home must be constituted on property owned by the persons constituting it.[8] Apparently, Tomas and petitioners are not owners but mere lessees of the property where their house is built, and that the period of lease, which was fixed by the RTC, had already expired on July 12, 2014.[9]

We further find that petitioners will not suffer “irreparable injury” within the contemplation of law. It is worth emphasizing that a TRO, under Section 5, Rule 58 of the Rule of Court, may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the writ of preliminary injunction could be heard.[10] Verily, damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy.[11] In *Power Sites and Signs, Inc. v. United Neon*, the Supreme Court held that damages cannot be considered grave and irreparable where the damage that petitioner may suffer can be quantified, easily subject to mathematical computation and, if proven, is fully compensable by damages.[12] In the instant case, We consider the damage that petitioners might suffer, in the event that the court a quo issues an order of demolition, is easily quantifiable or susceptible of mathematical computation and, if proven, fully compensable by damages.

Finding no compelling reason and imperative necessity in the issuance of injunctive writs, We RESOLVE to DENY petitioners’ prayer for the issuance of a TRO and/or WPI.

Meantime, We NOTE the Manifestation and Motion filed via registered mail by the Office of the Solicitor General on February 4, 2015.

SO ORDERED.

Lloren, J., Ch., and Santos, JJ., concur.

[1] See latest official receipt of the RTC, rollo, p. 56.

[2] Rollo, pp. 58-69.

[3] Phil. Economic Zone Authority vs. Joseph Jude Carantes, et al., G.R. No. 181274, June 23, 2010.

[4] St. James College of Parañaque vs. Equitable PCI Bank, G.R. No. 179441, August 9, 2010.

[5] St. James College of Parañaque vs. Equitable PCI Bank, G.R. No. 179441, August 9, 2010.

[6] Australian Professional Realty, Inc., et. al. vs. Municipality of Padre Garia Batangas Province, G.R. No. 183367, March 14, 2012.

[7] Cabang v. Basay, G.R. No. 180587, March 20, 2009.

[8] Cabang v. Basay, G.R. No. 180587, March 20, 2009.

[9] Please see dispositive portion of the RTC Decision dated July 12, 2011, rollo, p. 69.

[10] Brizuela v. Dingle, G.R. No. 175371, April 30, 2008.

[11] Philip Morris, Inc. v. Court of Appeals, G.R. No. 91332 July 16, 1993 citing Security Commission v. Bayona, 115 Phil. 105, 110 (1962).

[12] Power Sites and Signs, Inc. v. United Neon, G.R. No. 163406, November 24, 2009.

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