

XIMEX DELIVERY EXPRESS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND MARIA CECILIA SALINDO, RESPONDENTS.

Ponente: PEREZ, J.

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PEREZ, J.:

On 12 September 2014, We issued a Resolution[1] which directed petitioner's counsel to submit his updated 2014 IBP and PTR Numbers and directed private respondent to file a Comment on the petition (not a motion to dismiss) and to show cause why the prayer for injunctive relief should not issue within ten (10) days from notice to which petitioner may file a Reply within five (5) days from receipt of private respondent's Comment.

First, this Court resolves to:

1. NOTE petitioner's Compliance filed on 4 October 2014;[2]
2. NOTE private respondent's Comment filed on 2 October 2014;[3] and
3. NOTE petitioner's Reply filed on 5 December 2014.[4]

Going now to petitioner's prayer for a temporary restraining order and/or writ of preliminary injunction, petitioner seeks for the immediate issuance of an injunctive relief to enjoin public respondent NLRC from executing the 30 April 2014 Decision and the 22 July 2014 Resolution in NLRC No. MAC-11-013275-2013 [NLRC Case No. RAB-10-02-00069-2013] while his present petition pending before Us.

Petitioner alleges that the execution of the 30 April 2014 Decision and 22 July 2014 Resolution of the NLRC will render moot and academic his petition.[5] Petitioner also argues that there is an urgent necessity for the issuance of a TRO "to prevent irreparable injury to them as there is no way that petitioner could recover the consequences of the unjustified and improvident award of the monetary claims to private respondent." [6]

We are not persuaded.

Section 3, Rule 58 of the Rules of Court enumerates the grounds for the issuance of preliminary injunction, viz:

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.

A clear and positive right especially calling for judicial protection must be shown. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in esse and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right. There must be a patent showing by the applicant that there exists a right to be protected and that the acts against which the writ is to be directed are violative of said right.[7]

In the case at bar, petitioner anchors its prayer for injunctive relief on the claim that a writ of execution has already been issued to enforce the 30 April 2014 Decision and 22 July 2014 Resolution of the NLRC. However, it is clear from the records of the case that no writ of execution has yet been issued. Although a possibility exists that a writ of execution may issue, there also exists a possibility that the NLRC will deny or defer the motion for its issuance. Thus, there is no urgent threat which merits the issuance of an injunctive relief.

Further, even if a writ of execution will issue, the damage that petitioner may suffer is certainly not immeasurable because the monetary awards can easily be quantifiable and in the event that judgment is rendered in favor of petitioner in CA-G.R. SP No. 06360-MIN, private respondent can be ordered to return the monetary awards, with interests and/or damages, if appropriate. Petitioner has not shown how or why the payment of the monetary awards by way of execution is an irreparable injury to it that is without remedy or recovery.

WHEREFORE, the prayer for provisional injunctive relief is hereby DENIED.

Accordingly, 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 claims and defenses. After which, the petition shall be deemed submitted for resolution, with or without said memoranda.

SO ORDERED.

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

[1] Rollo, pp 199-200.

[2] Rollo, pp 201-203.

[3] Rollo, 204-212.

[4] Rollo, 213-220.

[5] Rollo, pp 17-18.

[6] Rollo, p 18.

[7] Salting v. Velez, G.R. No. 181930, January 10, 2011.

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