

**ASEANA BUSINESS PARK ESTATE ASSOCIATION, INC., PETITIONER,
VS. THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 142,
ALPHALAND DEVELOPMENT, INC., AND ALPHALAND MARINA
CORPORATION...**

Ponente: REYES-CARPIO, A., J.

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REYES-CARPIO, A., J.:

<blockquote>"In all then, the preliminary evidence presented by petitioners and the allegations in their complaint did not clearly make out any entitlement to the injunctive relief prayed for. Consequently, the RTC gravely abused its discretion in granting the writ of preliminary injunction. Trial courts are reminded to see to it that applications for preliminary injunction clearly allege facts and circumstances showing the existence of the requisites. We need not stress that an application for injunctive relief is construed strictly against the pleader."[1] (Emphasis and underscoring Ours)

Before the Court are three consolidated petitions for certiorari which seek to annul and set aside the Orders dated June 3, 2013[2] and October 18, 2013[3] of the Regional Trial Court, Branch 142, Makati City in Civil Case No. 13-540, "Alphaland Development, Inc. and Alphaland Marina Corporation v. D.M. Wenceslao & Associates, Aseana Business Park Estate Association, Inc., Delfin J. Wenceslao, Jr., Carlos C. Wenceslao, Delfin Angelo C. Wenceslao and Paolo C. Wenceslao."

The dispositive portion of the first assailed Order[4] reads:

"WHEREFORE, premises considered, plaintiff's application for preliminary injunction is GRANTED and defendants, by themselves or through their agents are hereby ENJOINED from performing any acts of obstruction or taking any other action or resorting to other means, that can and may impede and/or delay the construction and development of the Alphaland Marina Club Project.

Accordingly, let the corresponding Writ of Preliminary Injunction be issued subject to the posting of a bond by the plaintiff (sic) in the amount of One Million Pesos (P1,000,000.00), executed in favor of the defendants to the effect that said plaintiff (sic) will pay the defendants all damages that defendants may sustain by reason of this writ of injunction if the court should finally adjudged that the plaintiff (sic) is not entitled thereto.

The process server of this Court is hereby directed to serve copies of this Order upon the defendants and the plaintiffs forthwith.

The defendants are afforded until June 9, 2013 within which to file their respective responsive pleadings to the complaint as per Order dated May 27, 2013.

SO ORDERED."[5]

On the other hand, the Order dated October 18, 2013[6] disposed:

"WHEREFORE, in the light of the foregoing considerations, this Court hereby orders:

- Defendants' Motions for Reconsideration and Motions to Dismiss are both Denied for want of merit.

Plaintiffs' Motion to Declare the Defendants in Default is Denied for want of merit.

Accordingly, Defendants DMWAI, ABPEAI and the Individual Defendants are given fifteen (15) days from receipt hereof within which to file their respective Answers to the Complaint.

SO ORDERED.[7]

The facts which led the trial court in issuing the writ of preliminary injunction are enumerated by public respondent as follows:

"1. On March 10, 2013, before midnight, security personnel of Aseana Business Park Estate Association (ABPEA for brevity) blocked three (3) flatbed trucks of plaintiff Alphaland Development Inc. (ADI) and Alphaland Marina Corporation's (AMC) contractor from making a delivery to the project site.

Plaintiff filed a complaint with the Philippine Reclamation Authority (PRA for brevity) on March 11, 2013. On March 12, 2013, PRA issued an authorization letter allowing ADI and AMC to use Aseana Ave. to go to Alphaland Property.

2. On March 13, 2013, after midnight, the delivery of plaintiff's heavy equipment that arrived at the corner of Aseana Ave. and Macapagal Blvd., was blocked by ABPEA personnel using six (6) motorcycles. Plaintiff's representative then presented the ABPEA security personnel with the PRA Authorization Letter dated March 12, 2012, but the former said they needed endorsement from ABPEA so that the delivery trucks can be granted a vehicle gate pass.

Plaintiff's representatives talked to the ranking individuals of ABPEA on site (Dennis Gabuat and Emman Pamesa) who both claimed that they have specific instructions not to allow Alphaland deliveries without a permit from ABPEA Management.

When later the trucks were finally allowed to reach the property at 3:00 o'clock in the morning, ABPEA security personnel stationed near plaintiff's property, told plaintiff's representatives that they could not unload their equipment. They agreed in order to dispel the tension.

Plaintiff wrote another letter-complaint to PRA dated April 5, 2012 and PRA in turn wrote to ABPEA on April 5, 2013, thru its president, Delfin J. Wenceslao, Jr. to which was attached the Authorization letter of the same date authorizing the plaintiff to pass through Aseana Ave.

3. On April 15, 2013, ABPEA's security personnel again tried to prevent plaintiff's contractor from making a delivery to the project site despite having had successful deliveries on April 12, 2013.

Plaintiff relayed this incident to PRA thru a letter dated April 17, 2013. PRA called for a meeting on April 22, 2013 and in that meeting which was attended by plaintiff's lawyer, Rafael Ongpin, Atty. Rodolfo Ponferrada and other locators using Aseana Ave. (like Solaire and Belle).

In that meeting, Atty. Cristine A. Mortel, Asst. General Manager of the Legal and Administrative Services Department of the PRA, informed plaintiff's representatives that PRA will take over Aseana Ave. to stop anyone from blocking the same and preventing its use by the public.

4. On April 29, 2013, DMWAI people put up concrete barriers to prevent Alphaland's ability to access the project site through the public promenade area.

Plaintiff alleges that the obstructions by ABPEA personnel and the concrete barriers which Delfin Wenceslao and Associates, Inc. (DMWAI) erected caused significant delay in the project. ADI and AMC may be held in breach of its agreements and contracts with its suppliers and the hundreds of people who have reserved and indicated their intention to buy Marina Club shares. Also, plaintiff was forced to file this case against the

defendants.

Atty. Ponferrada has acknowledge[d] that there were only four (4) incidents of blockage and after the last, which involved the putting up of concrete barriers, there have been no other attempts for the blockage (tsn, May 22, 2013, p. 55).”[8]

As earlier stated, the trial court granted the writ of preliminary injunction. Petitioners moved for its reconsideration but their respective motions were denied by the trial court in its second assailed Order.

Aggrieved, petitioners are before this Court via these consolidated petitions for certiorari, all challenging the issuance of the writ of preliminary injunction on the ground that the requisites for the issuance of the writ were not present.[9]

In Our Resolution dated November 25, 2014[10], We deemed the cases submitted for decision, including the Motion for Reconsideration[11] filed by petitioner DM Wenceslao & Associates (in CA-GR SP No. 133637) in connection with Our Resolution dated September 15, 2014.

It must be stressed that Our aforementioned Resolution dated September 15, 2014[12] actually, among other things, denied the prayer for the issuance of a temporary restraining order or writ of preliminary injunction pending resolution of the three petitions. It is on this aspect that petitioner D.M. Wenceslao & Associates moves for the reconsideration thereof. Considering, however, that We are now resolving the petition on the merits, We find it no longer necessary to dwell on said Motion for Reconsideration.

We now resolve the petitions.

The main issue in these petitions is whether or not public respondent committed grave abuse of discretion in granting the writ of preliminary injunction in favor of private respondents.

The recent case of *Lukang v. Pagbilao Development Corporation*[13] is instructive:

“A writ of preliminary injunction is a provisional remedy which is adjunct to a main suit, as well as a preservative remedy issued to maintain the status quo of the things subject of the action or the relations between the parties during the pendency of the suit. The purpose of injunction is to prevent threatened or continuous irremediable injury to the parties before their claims can be thoroughly studied and educated. Its sole aim is to preserve the status quo until the merits of the case are fully heard. Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are 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, a writ of preliminary injunction may be issued upon the concurrence of the following essential requisites, to wit: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. While a clear showing of the right is necessary, its existence need not be conclusively established. Hence, to be entitled to the writ, it is sufficient that the complainant shows that he has an ostensible right to the final relief

prayed for in his complaint.

The well-entrenched rule is that the grant or denial of the writ of preliminary injunction rests upon the sound discretion of the court. The trial court is given a wide latitude in this regard. Thus, in the absence of a manifest abuse, such discretion must not be interfered with. "Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law."

In here, there is a need to evaluate the Complaint for Injunction[14] and the preliminary evidence presented by private respondents that may justify the issuance of the writ of preliminary injunction vis-a-vis the basis used by the trial court in its assailed Order.[15]

In the assailed Order dated June 3, 2013,[16] the trial court came up with the following analysis:

"Plaintiff was granted a foreshore lease by the Department of Energy (sic) and Natural Resources (DENR) on the foreshore lease area of Manila Bay and on which it is developing and constructing the Alphaland Marina Club. This right is clear and unmistakable and even the defendants have not disputed the same. That right necessarily includes the right to access the site peacefully and without impediment.

Defendants have been shown to have, through their agents, committed acts which have prevented and/or obstructed plaintiff's access to the project site, and thus caused delay in the completion of the project on time. Defendants' offered justifications for their questioned obstructive acts obviously were not acceptable to the governing body, the PRA, as the latter took over control of the disputed passage (Aseana Ave.) to stop anyone from blocking the same and preventing its use by the public, obviously aware of the obstruction perpetrated. And even after the PRA assumed control over Aseana Ave., defendants continued with the obstruction by putting up concrete barriers in plaintiff's other means of access to the project site. Plaintiff's fear of delay in the completion of its project is thus not unfounded as defendants' propensity to resort to other obstructive means has become evident."[17]

Acting on the motions for reconsideration, the trial court ratiocinated:

"As resolved by this Court, Plaintiffs successfully established their clear and unmistakable right which need the protection of an injunctive writ.

Plaintiff ADI, being the lead developer, was granted a foreshore lease by the DENR on the foreshore lease area of the Manila Bay where it is developing and constructing the Alphaland Marina Club. The right includes the right to access the site peacefully and without impediment, specially through Aseana Avenue which is a public street owned by the government, through PRA.

Plaintiffs have clearly established their right to develop and construct the Marina Project by virtue of the 27 July 2011 Foreshore Lease Agreement between Plaintiff ADI and the DENR. The 23 December 2010 MOA wherein the right to develop and construct the Marina Project was expressly assigned to ADI as lead developer. Defendants have been shown to have, through their agents, committed acts which prevented Plaintiffs' right to construct the Marina Club Project by stopping deliveries on Aseana Avenue and placing concrete barriers on the Promenade Area. Such acts of Defendants caused Plaintiffs to suffer grave and irreparable injury as the development of the Marina Project has been significantly delayed, thus affecting their contracts with the suppliers and the people who have reserved and indicated their intention to buy Marina Club shares. Delays and failure to meet expectations have adverse effects on Plaintiffs' reputation as a developer. And even after the PRA assumed control over Aseana Avenue, Defendants continued with the obstruction by putting concrete barriers in Promenade Area. Under the above circumstances, the injunctive writ is in order.[18]

In their Complaint,[19] private respondents alleged:

8. Plaintiffs ADI and AMC are currently developing and constructing the Alphaland's Marina Club [P]roject (the "Project") on a foreshore lease area of Manila Bay, which foreshore lease was granted by the Department of Environment and Natural Resources ("DENR") to ADI. The project is ultimately wholly owned by ADI.

9. The Project will cost about Php1.5 Billion to build and is projected to be worth up to Php25.0 Billion once completed. And ADI and AMC have committed to deliver the Project by 2014. Thus, any delay to the Project will certainly result in serious damage and injury to the plaintiffs.

10. The defendants have attempted to, and continue to attempt to, obstruct the development of the Project to the utter prejudice of the plaintiffs.

11. First, sometime on 10 March 2013, security personnel of ABPEA (upon orders of defendant Delfin J. Wenceslao, Jr.) stopped the delivery by three flatbed trucks of ADI and AMC's contractor for the Project. The three flatbed trucks were making their delivery through Aseana Avenue, a public road owned by the Republic of the Philippines, through the Philippine Reclamation Authority ("PRA").

12. This prompted ADI to complain before the PRA and the PRA thereafter issued an Authorization on 12 March 2013 allowing the plaintiffs "to use and pass through the Aseana Avenue in order to reach [Alphaland's] property." The Authorization further provides that it "is issued for the purpose of bringing equipment and materials of [Alphaland's] property in connection with the development of their Marina Project."

x x x

13. Then on 14 March 2013, the plaintiffs proceeded to cause their contractor to make another delivery and presented the PRA Authorization to Mr. Emman Pamesa, who identified himself as the person in charge [of] ABPEA on site. Despite the presence of the PRA Authorization (which essentially amounts to a surplusage since the plaintiffs are utilizing a public road, Aseana Avenue, and will not be going thru property owned by any of the defendants), security personnel of ABPEA (upon orders of defendant Delfin J. Wenceslao, Jr.) still prevented the delivery to the Project site. However, emboldened by the PRA Authorization, the plaintiffs caused their contractor to proceed with the delivery to the Project site.

14. To prevent a repeat of this open defiance by the defendants of an issuance of a government agency recognizing the right of the plaintiffs to use a public road, the plaintiffs once more sought the intercession of the PRA.

15. The PRA then issued a letter dated 5 April 2013 addressed to ABPEA directing it to allow the delivery trucks of the plaintiffs "to use and pass through Aseana Avenue in going to [Alphaland's] property in Central Business Park 1 B&C, Paranaque City." The PRA likewise issued another Authorization dated 5 April [2013], which expressly reiterated the language of its earlier Authorization of 12 March 2013. This Authorization dated 5 April 2013 was attached to the 5 April 2013 letter addressed to ABPEA.

x x x

16. With this 5 April 2013 letter from the PRA, the plaintiffs were able to make successful deliveries on 12 and 13 April 2013 without any obstruction from ABPEA. However, for some reason, on 15 April 2013, the security personnel of ABPEA (again upon orders of defendant Delfin J. Wenceslao, Jr.) once more obstructed and prevented the delivery made by the contractors of the plaintiffs on 15 April 2013.

17. The plaintiffs once more sought the intercession of the PRA. The PRA, in a meeting held on 22 April 2013, informed the plaintiffs that it will now physically take-over Aseana Avenue so that no entity (including defendant ABPEA and the other defendants) can prevent the public from using this public road.

18. As they would no longer be able to obstruct the development of the Project through Aseana Avenue

because of what the PRA did, sometime during the weekend of 27 and 28 April 2013, the defendants erected (or caused to be erected) concrete barriers in the middle of PRA-owned property adjacent to the foreshore lease area where the Project is being built in order to prevent ADI and AMC from proceeding with the development of the Project.

x x x

19. In view of the dogged determination of the defendants to illegally obstruct and delay the Project despite the clear and express authorization from the PRA, the relevant government agency for the Project, the Plaintiffs are left with no other recourse but to seek judicial relief.[20] (Emphasis and underscoring Ours)

A second look at the pieces of documentary evidence presented by the parties is likewise necessary.

It appears from the records that the right to build a Marina was conferred by then Philippines Estates Authority (now the PRA) to R-1 Consortium, a group composed of Jan De Nul, TOA Corporation Inc., Royal Asia Development Corporation, and petitioner D.M. Wenceslao and Associates, Inc., as evidenced by the Implementing Agreement No. 2, Reclamation of Islands B and C of CBP 1 under the MCCRRPP Framework Plan dated April 15, 1991.[21] It provided, among other things, that:

ARTICLE VIII

MISCELLANEOUS PROVISIONS

1. PEA shall not authorize the undertaking of future reclamation works on the Manila Bay front of Island C without the written consent of the Consortium; Provided, that the Consortium may exercise the option to convert said frontage into a beach or Marina, in accordance with PEA-approved plans.[22]

On December 23, 2010, the Consortium entered into a Deed of Assignment[23] with A.A. Land Properties Developers Corporation, now the Alphaland Bay City Corporation (also referred to as the ABC Corporation). The "Recitals" provided the following:

"WHEREAS, Implementing Agreement No. 2 (re Reclamation of Islands B and C of CBP 1 under the MCCRRPP Framework Plan) dated 5 April 1991 between the Public Estates Authority, now known as the Philippine Reclamation Authority ("PRA") and R-1 contains the following provisions:

x x x

WHEREAS, R-1 has offered to assign, and A.A. LAND has agreed to accept the rights of R-1 to convert the frontage into a Marina as provided in the afore-quoted Implementing Agreement (the "Marina Rights");

WHEREAS, the Marina will form part of the Alphaland Bay City project to be developed by A.A. Land, a joint venture between Alphaland Development, Inc. and D.M. Wenceslao & Associates, Inc.;

NOW, THEREFORE, for and in consideration of the foregoing premises, R-1 hereby assigns and conveys the Marina Rights to A.A. LAND." [24]

On even date, a Memorandum of Agreement[25] was signed by and between A.A. Land Properties Developers Corporation and private respondent ADI. Under the said Memorandum of Agreement, ADI was appointed as the "lead developer for the Marina Rights," thus:

"WHEREAS, pursuant to a Deed of Assignment executed by R-1 Consortium in its favor x x x, A.A. LAND is the assignee of the Marina Rights as defined in the attached Deed;

WHEREAS, to develop the Marina Rights, clearances and permits have to be secured from various government agencies such as the Philippine Reclamation Authority, the Department of Environment and Natural Resources, and the Philippine Ports Authority (the "Governmental Authorizations");

WHEREAS, A.A. LAND is in the process of developing the Alphaland Bay City project, a 32-hectare mixed use development at the Aseana Business Park in Paranaque City (the "Project") and has appointed ADI as the lead developer for the Project.

WHEREAS, the marina that will be built and developed pursuant to the Marina Rights shall form part of the Project; and

NOW, THEREFORE, for and in consideration of the foregoing premises and for other valuable consideration, A.A. LAND hereby appoints ADI, which appointment ADI accepts, as lead developer for the Marina Rights. This appointment shall include, among others, the right, power and privilege to secure, for and on behalf of A.A. LAND, the Governmental Authorizations and any other matter incidental thereto.”[26] (Emphasis and underscoring Ours)

On the other hand, it would appear that private respondents failed to secure the necessary "governmental authorizations." For instance, the Office of the City Building Official of Parañaque City issued a Certification dated May 20, 2013[27] to the effect that “No Building Permit has been issued to Alphaland Development Inc. or Alphaland Marina Inc. located at Aseana Avenue, Aseana City, City of Parañaque, Metropolitan Manila from year 2012 up to the present.”

The inescapable conclusion is that private respondents misrepresented that they “wholly owned” the project, which claim is not supported by pertinent documents; on the contrary, it points to private respondents as the "lead developer" tasked to "secure, for and on behalf of A.A. LAND, the Governmental Authorizations and any other matter incidental thereto."

A party who seeks the equitable relief of injunction must come to court with clean hands. A litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair, dishonest, fraudulent, or deceitful as to the controversy in issue.[28] The case of *University of the Philippines v. Catungal, Jr.*[29] is instructive:

“Since injunction is the strong arm of equity, he who must apply for it must come with equity or with clean hands. This is so because among the maxims of equity are (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands. The latter is a frequently stated maxim which is also expressed in the principle that he who has done inequity shall not have equity. It signifies that a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful as to the controversy in issue.”

As early as 1936, the Supreme Court explained the effect of making untruthful statements in an application for preliminary injunction:

“It has been already stated that the plaintiff, to obtain a preliminary injunction in this case, alleged under oath in its original complaint facts which it knew to be false, or, at least, improbable, because it did not only eliminate them from the amended complaint which it filed after the issuance of the preliminary injunction, but it failed to substantiate them at the trial. We refer to the following allegations: "that the defendant used to go to the 'mill site' of the plaintiff passing through plaintiff's private roads and there cause trouble among the peaceful people of the place," and "that notwithstanding the prohibition of the plaintiff, the defendant insists in repeating his incursions into the said private roads and 'mill site' of the plaintiff, disturbing public order and molesting plaintiff's employees and their families."

If said allegations were true, it is evident that plaintiff was entitled to a preliminary injunction at the commencement of the trial, and to a permanent injunction after the decision was rendered. But such is not the case, as the subsequent theory of the plaintiff, announced in its amended complaint, is not that the defendant "made incursions into the 'mill site' and private roads of the plaintiff, causing trouble, disturbing public order,

and molesting plaintiff's employees and their families," but only that the defendant, to take tuba to the Hacienda "Sañgay," belonging to Luciano Aguirre, insisted in passing through plaintiff's estate. From all this it follows that the plaintiff in order to obtain a preliminary injunction, trifled with the good faith of the lower court by knowingly making untrue allegations on matters important and essential to its cause of action. Consequently, it did not come to court with clean hands.

'Coming into Equity with Clean Hands. — The maxim that he who comes into equity must come with clean hands is, of course, applicable in suits to obtain relief by injunction. Injunction will be denied even though complainant shows that he has a right and would otherwise be entitled to the remedy in case it appears that he himself acted dishonestly, fraudulently or illegally in respect to the matter in which redress is sought, or where he has encouraged, invited or contributed to the injury sought to be enjoined. However, the general principle that he who comes into equity must come with clean hands applies only to plaintiff's conduct in relation to the very matter in litigation. The want of equity that will bar a right to equitable relief for coming into court with unclean hands must be so directly connected with the matter in litigation that it has affected the equitable relations of the parties arising out of the transaction in question." (32 C.J., pp. 67, 68.)"[30] (Emphasis and underscoring Ours)

While private respondent ADI presented the Foreshore Lease Agreement[31] which it signed with the Department of Environment and Natural Resources on July 27, 2011, this document must be reconciled with prior documents showing that it was merely part of a bigger group. It should be noted that the Foreshore Lease Agreement is intertwined with the letter dated March 10, 2011[32] of Peter Anthony A. Abaya, the General Manager. The letter reads:

"Mr. MARIO A. ORETA

Subject: Alphaland's Foreshore Lease Application with DENR

Dear Mr. Oreta:

This refers to your letter dated March 4, 2011 submitting the following documents in compliance with our requirements as indicated in our letter dated February 16, 2011, relative to the above subject: (1) Deed of Assignment – between R-1 Consortium and A.A. Land Properties Developers Corporation ("A.A. Land") and (2) Memorandum of Agreement -between A.A. Land and Alphaland by virtue of which A.A. Land has appointed Alphaland as lead developer for the Marina Rights.

By virtue of the area not presently being utilized for the implementation of this Agency's reclamation projects under the Philippine Reclamation Plan (PRP) and in consideration of the option of R-1 Consortium under Implementing Agreement No. 2 pertaining thereto, which the latter has assigned to A.A. Land Properties Developers Corporation who in turn has appointed Alphaland Corporation as lead developer for the Marina project under a Memorandum of Agreement, this Agency hereby indicates no objection to Alphaland Corporation's foreshore lease application with the DENR, provided the following terms and conditions shall be complied [with]:

1. The Marina project must be in accordance with PRA/PEA approved plans pursuant to Implementing Agreement No. 2. Currently, PRA has the Manila Bay Sector Plan under the Philippine Reclamation Plan;

x x x[33]

Thus, to rely on the Foreshore Lease Agreement, without taking into consideration the pieces of documentary evidence presented by the petitioners, is tantamount to grave abuse of discretion on the part of public respondent.

Moving to another point, while Aseana Avenue is a public road owned by the government, it does not follow that the use thereof cannot be subject of regulation.

It appears from the records that Aseana Avenue was built by petitioner DMWAI, and was turned over to the

government in March 2013. However, the maintenance thereof for one year was given to Aseana Business Park Estate Authority (hereinafter referred to ABPEA) which is composed of all locators who own or acquired occupancy rights over properties within the Aseana Business Park.[34]

In here, the “No Gate Pass, No Entry” is strictly enforced for those who enter the Aseana Business Park.

ADI bought its properties from Wendel Holdings, Inc. on August 8, 2007. The pertinent portion of the Contract to Sell and Buy[35] states:

“SECTION 13. After the execution of the Deed of Absolute Sale, the BUYER [ADI] undertakes to become a member of the Aseana Business Park Estate Association (“ABPEA”), a corporation organized and incorporated under Philippine laws for the maintenance of the Aseana Business Park, and abide by and comply with all ABPEA’s rules and regulations.”[36]

On even date, the Deed of Absolute Sale was executed.[37]

This leads to the question of whether or not ADI is a member of ABPEA. Petitioners contend that the membership is automatic, while private respondents claim that there is an application process.[38]

Granting that there is an application process, We still find that there was a breach of the contractual obligation on the part of ADI, as it does not appear that it indeed “undertook” to be a member of the ABPEA. To allow it to benefit from its failure to honor its commitment leads to absurd consequences. “Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.”[39]

In any event, We do not see any reason to exempt private respondents from the “No Gate Pass, No Entry” policy, the imposition of which is dictated by security considerations. Private respondents have not shown that the policy is unjust and illegal.

Be that as it may, the records show that the PRA already took over the security outpost at the intersection of the Macapagal Boulevard and Aseana Avenue on April 20, 2013. On the other hand, the concrete barriers on the promenade were removed on April 30, 2013. All told, private respondents have free access through Aseana Avenue.[40] Thus, in this regard, private respondents failed to show the

urgent necessity

for its issuance.

That there might be some threats in the future cannot be the basis to grant the writ of preliminary injunction, either. This is clearly speculative. If the injury sought to be protected is prospective in nature, the injunctive relief should not be granted.[41]

It bears stressing that private respondents’ witness, Mr. Rafael Garcia Ongpin, the Senior Vice President and Project Director of the Alphaland Marina Club Project, during the hearing for the application of the writ of preliminary injunction, testified on cross-examination as follows:

“Atty. Custodio - It is correct Mr. Witness that your testimony now is that the PRA is manning the guard post, is that correct?

Mr. Ongpin – Yes, Sir.

Atty. Custodio – And there is now free access of your delivery trucks, correct?

Mr. Ongpin – Yes, Sir.

Atty. Custodio – Do you have any idea of what future interferences you referred to at this time?

Mr. Ongpin – No, Sir.

Atty. Custodio – So, if there is nothing more in particular that you want the court to restrain at this particular time, correct?

Mr. Ongpin – There are possible acts, not committed yet but there are actually possible that we are asking the Court to restrain.

Atty. Custodio – By that, you mean any possibility in the future?

Mr. Ongpin – Yes, Sir, there can be others.

Atty. Custodio – Alright, but right now, you are not clear as in fact, there is none, that you would want the Court to restrain?

Mr. Ongpin – Yes, Sir.”[42]

On the other hand, applicants for preliminary injunction must likewise establish the “irreparable injury” in order to be entitled to the issuance thereof. An injury is considered irreparable if it is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation. The provisional remedy of preliminary injunction may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard of compensation.[43]

In here, private respondents themselves were able to estimate the cost and value of the project, thus:

“9. The Project will cost about Php1.5 Billion to build and is projected to be worth up to Php25.0 Billion once completed. And ADI and AMC have committed to deliver the Project by 2014. Thus, any delay to the Project will certainly result in serious damage and injury to the plaintiffs.”[44] (Emphasis and underscoring Ours)

IN FINE, the countervailing pieces of evidence prevail over the Foreshore Lease Agreement which, it appears, was the sole basis of the trial court's granting of the writ of preliminary injunction.

WHEREFORE, the Petition is GRANTED. The Orders dated June 3, 2013 and October 18, 2013 of the Regional Trial Court, Branch 142, Makati City in Civil Case No. 13-540 are hereby ANNULLED and SET ASIDE in so far as the writ of preliminary injunction is concerned, which is accordingly LIFTED.

SO ORDERED.

Carandang, R.D., Chairperson, and Barza, R.F., JJ., concur.

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

[2] Rollo (CA-GR SP No. 133562), pp. 56-58

[3] Rollo (CA-GR SP No. 133562), pp. 59-85

[4] Rollo (CA-GR SP No. 133562), pp. 56-58

[5] Rollo (CA-GR SP No. 133562), p. 58

[6] Rollo (CA-GR SP No. 133562), pp. 59-85

[7] Rollo (CA-GR SP No. 133562), p. 85

[8] Rollo (CA-GR SP No. 133562), pp. 56-57

[9] In CA-GR SP No. 133562, petitioner Aseana Business Park Estate Association, Inc. presented the issue as "WHETHER PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN GRANTING PRIVATE RESPONDENTS' APPLICATION FOR A WRIT OF PRELIMINARY INJUNCTION." (rollo, p. 23)

In CA-GR SP No. 133636, individual petitioners Delfin J. Wenceslao, Jr. et al, framed the issue as "PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING PRIVATE RESPONDENTS' APPLICATION FOR PRELIMINARY INJUNCTION IN THE CASE A QUO." (rollo, p. 10)

In CA-GR SP No. 133637, petitioner D.M. Wenceslao and Associates, Inc. presented the issue as:

"ADI and AMC were not entitled to injunctive relief, considering that:

- ADI and AMC have no clear or positive right to be protected.
- ADI and AMC do not own the Alphaland Marina Club Project.
- ADI and AMC are bound by the no gate pass, no entry policy in the Aseana Business Park.
- here was no material or substantial invasion of ADI and AMC's rights to be enjoined.
- The acts sought to be prevented have ceased to exist even before the Complaint was filed.
- Injunction does not lie to prevent a mere prospective injury.
- Neither ABPEA's security operations nor the concrete barriers impeded or delayed the construction and development of the project.
- ADI and AMC would not suffer any grave or irreparable injury if injunction was not granted.

(Rollo, p. 14)

[10] Rollo (CA-GR SP No. 133562), pp.624-625

[11] Rollo (CA-GR SP No. 133562), pp. 612-620

[12] Rollo (CA-GR SP No. 133562), pp. 607-610. The dispositive portion reads:

ACCORDINGLY, the consolidation of the instant cases is ACCEPTED. Petitioner Aseana's Motion to Expunge and Reply are NOTED. The Motion for Reconsideration in CA-G.R. SP No. 133562 and the Application for the Issuance of a Temporary Restraining Order/Writ of Preliminary Injunction in CA-G.R. SP No. 133637 are DENIED.

The Motion for Extension of Time to File Comment in CA-G.R. SP No. 133636 is GRANTED and the Comment subsequently submitted is NOTED. The Motions for Additional Time to File Reply are also GRANTED and the Reply filed thereafter is NOTED.

Meantime, refer the consolidated cases to CA-PMC for mediation. The parties are directed to pay the required mediation fee.

SO ORDERED.

[13] G.R. No. 195374, March 10, 2014

[14] Rollo (CA-GR SP No. 133562), pp. 86-94

- [15] See *St. James College of Parañaque v. Equitable PCI Bank*, G.R. No. 179441, August 9, 2010
- [16] *Rollo* (CA-GR SP No. 133562), pp. 56-58
- [17] *Rollo* (CA-GR SP No. 133562), p. 58
- [18] *Rollo* (CA-GR SP No. 133562), p. 77
- [19] *Rollo* (CA-GR SP No. 133562), pp. 86-94
- [20] *Rollo* (CA-GR SP No. 133562), pp. 88-90
- [21] *Rollo* (CA-GR SP No. 133637), pp. 107-118
- [22] *Rollo* (CA-GR SP No. 133637), pp. 112-113
- [23] *Rollo* (CA-GR SP No. 133637), pp. 105-106
- [24] *Rollo* (CA-GR SP No. 133637), p. 105
- [25] *Rollo* (CA-GR SP No. 133637), pp. 119-121
- [26] *Rollo* (CA-GR SP No. 133637), p. 119
- [27] *Rollo* (CA-GR SP No. 133637), p. 122
- [28] *Pilapil v. Garchitorena*, G.R. No. 128790, November 25, 1998. See also *Palm Tree Estates, Inc. v. PNB*, G.R. No. 159370, October 3, 2012
- [29] G.R. No. 121863, May 5, 1997
- [30] *North Negros Sugar Co. Inc. v. Hidalgo*, G.R. No. 42334, October 31, 1936
- [31] *Rollo* (CA-GR SP No. 133637), pp.169-177
- [32] *Rollo* (CA-GR SP No. 133562), pp.267-268
- [33] *Rollo* (CA-GR SP No. 133562), p.267
- [34] Petitioner Delfin Wenceslao, Jr. testified on May 27, 2013 that:

COURT:

Q – When this deed of sale was executed, there is not much development yet in that area?

A – We were already working on the roads, your honor.

Q – That was in 2007?

A – Even earlier, your honor. The reason we got control of the roads is because we buil[t] the roads, specially the Aseana Avenue. We have a contract with the government to build, your honor, and as you would note, this [was] built at no cost to the government. We [were] paid in lots , we [were] not paid in cash. We [were] paid in properties. So what happens like in any other infrastructure contracts, after you have completed it and turn it over to the government, we required them a one year maintenance period and we turned it over sometime March this year and therefore the maintenance period is up to next year, 2014. x x x (TSN, May 27, 2013, p. 22. rollo, CA-GR SP No. 133637, p. 570)

[35] *Rollo* (CA-GR SP No. 133637), pp.123-137

[36] Rollo (CA-GR SP No. 133637), p.132

[37] Rollo (CA-GR SP No. 133637), pp.138-140

[38] The By-Laws of ABPEA reads:

Article V

Members

Section 1. Qualifications for Membership. - The Board shall determine the qualifications of an applicant for membership.

[39] CIVIL CODE, ARTICLE 1159

[40] See Rollo (CA-GR SP No. 133637), p. 25

[41] Ermita v. Delorino, G.R. No. 177130, June 7, 2011

[42] TSN, May 14, 2013, rollo (CA-GR SP No. 133637), p. 267

[43] Bank of the Philippine Islands v. Hontanosas, Jr., G.R. No. 157163, June 25, 2014

[44] Rollo (CA-GR SP No. 133637), p. 235 </blockquote

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