

**SPOUSES ANTONIO G. UYKING AND NANCY G. UYKING,
PETITIONERS, VS. HON. MANUEL C. CARPIO, PRESIDING JUDGE OF
THE REGIONAL TRIAL COURT, BRANCH 16, DAVAO CITY, AND BANK
OF THE PHIL...**

Ponente: CONTRERAS, J.

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CONTRERAS, J.:

For Our resolution is petitioners' Urgent Motion for Issuance of Temporary Restraining Order (urgent motion for issuance of TRO).

The case stemmed from the Order dated April 19, 2011 of the Regional Trial Court, Branch 16 of Davao City (public respondent), which issued a Writ of Possession in favor of private respondent Bank of the Philippine Islands (BPI) in Case No. 032-11. On June 14, 2011, Spouses Antonio and Nancy Uyking (petitioners) moved to recall the writ of possession and the subsequent notice to vacate. The RTC-16 denied petitioners' motion, as well as the subsequent motion for partial consideration.

These prompted petitioners to file the instant petition for certiorari, with prayer for issuance of a temporary restraining order (TRO) and/or writ of preliminary restraining order (WPI) to enjoin the RTC-16 (public respondent) to implement the writ of possession in Case No. 1,032-11.

On October 11, 2012, We issued a Minute Resolution directing BPI to file a Comment on the petition and to show cause why a TRO and/or WPI should not be issued. In compliance therewith, BPI filed a Comment on December 7, 2012. Petitioners filed no Reply.

On January 14, 2013, We denied petitioners' prayer for issuance of a TRO and/or WPI and at the same time, ordered the parties to file their respective memorandum. BPI filed a memorandum on February 19, 2013, while petitioner filed on March 18, 2014.

On April 24, 2014, the instant petition was declared submitted for decision.

On October 14, 2014, counsel for petitioners filed a Manifestation stating therein that Sheriff IV Divinigracia B. Barcelona of the RTC served petitioners and counsel for BPI Final Notice To Vacate (notice to vacate) without furnishing the Chua Law Office, as counsel for petitioners, a copy thereof. It insisted that the Sheriff should first await the decision of this Court before he implements the notice to vacate.

On February 4, 2015, BPI filed with the public respondent an Ex-Parte Motion for the Issuance of Break-in Open Order (ex-parte motion). Again, counsel for petitioners claimed not being furnished a copy of the said ex-parte motion and then, insisted that BPI should have awaited the decision of this Court.

On February 4, 2015, public respondent issued a Break-Open Order. Hence, this urgent motion for the issuance of TRO filed by petitioners, praying for this Court to enjoin public respondent from implementing its break-open order, otherwise, petitioners will suffer grave and irreparable injury because BPI will succeed in taking possession

of their mortgaged properties.

We are inclined to deny petitioners' urgent motion for the issuance of TRO.

To authorize a temporary injunction, the petitioner must at least make out a prima facie showing of a right to the final relief.[1] 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.[2]

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.[3]

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.[4]

Petitioners in the instant case failed to establish the existence of an actual, clear, and unmistakable right that needed the protective mantle of a TRO.

It is worthy to note that petitioners mortgaged subject properties to BPI in order secure their loans with the bank. When petitioners defaulted in the payment of their loans, the real estate mortgages were foreclosed and the properties were sold at public auction with BPI as the highest bidder. After petitioners failed to redeem the properties within the redemption period and after ownership of the properties was consolidated to and new certificates of title⁵ were issued in BPI's name, BPI moved for issuance of a writ of possession. BPI was granted a writ of possession. The Sheriff implemented the writ of possession by serving petitioners a notice to vacate. Following petitioners' refusal to receive the notice to vacate, the court a quo, upon BPI's motion, issued a break-open order. Clearly, it appears that herein petitioners do not have an actual existing right that would entitle them to be protected by a TRO. No right on their part was either invaded or violated by the issuance of the break-open order. It is important to emphasize that the break-open order is but a necessary legal consequence of the issuance of a writ of possession in favor of BPI.

Petitioners also failed to demonstrate the extent of irreparability of injury that they will suffer should this Court fail to restrain the implementation of the break-open order.

Under Section 5, Rule 58 of the Rule of Court, a TRO 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.[6] 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.[7] Here, We find that petitioners will not suffer "irreparable injury" within the contemplation of law because the damage that petitioners may suffer, as consequence of the implementation of the writ of possession, is quantifiable or susceptible of mathematical computation and, if proven, fully compensable by damages.

WHEREFORE, premises considered, the prayer for a TRO is denied for lack of basis.

SO ORDERED.

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

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

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

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

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

[5] Rollo, pp. 82-85.

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

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

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