

**SPS. VIRGILIO AND GLYNNA F. CRYSTAL, ACTING FOR THEMSELVES
AND AS PARENTS OF MINOR CHILDREN MONICA CLAIRE CRYSTAL
AND FRANCES LORRAINE CRYSTAL, PETITIONERS, VS. CEBU
INTERNATION...**

G.R. No. 135433. April 04, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A writ of preliminary injunction, whether mandatory or prohibitory, will be issued only upon a showing of a clear and unmistakable right that is violated. Moreover, the applicant must show an urgent and permanent necessity for its issuance. Herein petitioners, however, failed to demonstrate a clear and unmistakable right to be enrolled in the Cebu International School. Hence, the Court of Appeals cannot be faulted for denying their plea.

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the March 16, 1998 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 44486. The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, for lack of sufficient merit, the instant petition is DENIED and, accordingly, DISMISSED, without pronouncement as to costs."[3]

Also assailed is the August 10, 1998 CA Resolution denying petitioners' Motion for Reconsideration.

The present case stemmed from Civil Case No. CEB-19058 entitled "Spouses Virgilio F. Crystal, et al., plaintiffs vs. Cebu International School, et al., defendants," in which petitioners' application for the issuance of a writ of preliminary injunction was denied by the Regional Trial Court (RTC) of Cebu, as follows:

"WHEREFORE, premises considered, plaintiffs' application for a writ of preliminary injunction is hereby DENIED for lack of merit and basis in law. Needless to stress, the restraining order previously issued is consequently vacated.

"Accordingly, the Clerk of Court of this Branch is directed to set the pre-trial conference to a date compatible with the Court's calendar."[4]

The Facts

The facts of the case are succinctly summarized by the Court of Appeals in this wise:

"In the amended complaint they filed with the respondent court on August 8, 1996, the petitioners-spouses Virgilio and Glynna Crystal alleged that they sent all their children -- Sheryll Louise, Doreen Angeli, Monica Claire and Frances Loraine -- to study at the private respondent Cebu International School (CIS). Sheryll Louise and Doreen Angeli finished their elementary and secondary education at the said school; while Monica Claire completed kindergarten up to Grade 7 and Franc[e]s Loraine, kindergarten up to Grade 3 in the schoolyear 1995-96, thereby entitling the latter two to enroll in the next higher grade in the schoolyear

1996-97.

"On June 21, 1996, the petitioners parents and children went to CIS to enroll. After complying with the school's enrollment and admission requirements, they were given the schedule of fees for Grades 4 and 8, as well as the summary of total fees due upon enrollment in the amount of P35,187.00. However, without any justifiable reason, the school refused to accept the payment by the petitioners of the enrollment fees unless they also pay the other charges called 'land purchase deposit' in the amount of P50,000.00 per student plus surcharge of 2.5% per month starting from the schoolyear 1995-96.

"The school and its officials, all of whom are impleaded herein as private respondents, allegedly justified the 'land purchase deposit' for the schoolyear 1995-96 by impressing upon the petitioners 'that they have found the land in Busay that they can purchase at a very reasonable price and if the money is not made available at the time, the x x x school would lose the opportunity to purchase the land where the x x x school will transfer.' The petitioners were forced to pay P25,000.00 in the schoolyear 1995-96 because otherwise their application for admission could have been rejected. However, when the CIS failed to purchase the land in Busay, they demanded that the P25,000.00 be applied to the balance of their tuition fees for the schoolyear 1995-96 to which the private respondents acceded.

"Subsequently, the private respondents re-imposed the 'land purchase deposit' and assessed against the petitioner a surcharge of P24,746.79. The imposition is violative of B.P. Blg. 232, R.A. No. 5445, P.D. No. 603, the Manual for Private Schools and other pertinent laws, rules and regulations of the Department of Education, Culture and Sports (DECS) which did not authorize or priorly approve the same. Thus, the petitioners parents felt that a 'gun was pointed at their head, with the children held as hostage.' So, they made a tender of the P100,000.00 under compulsion but was refused unless they also pay the surcharge of P24,396.69.

"The petitioners thereafter repeatedly tendered payment of the total fees due upon enrollment computed at P38,170.00 and pleaded for the admission of their daughters for enrollment and for the release of their report cards but were just ignored by the respondents. Consequently, they suffered damages. Accordingly, they prayed for the following reliefs:

'WHEREFORE, it is most respectfully prayed that Judgment be ordered:

'1. Immediately enjoining the defendants from enforcing and collecting the 'land purchase deposit' and its 'surcharge' as prerequisite for enrollment and/or ordering the defendants to immediately accept the plaintiffs' application for admission and/or to immediately admit the plaintiffs in Grade 4 and Grade 8 respectively at the defendant school and to accept the payment in the amount of P35,187.00;

'2. After trial, making the injunction above mentioned permanent and:

'a. Declaring the imposition and collection of 'land purchase deposit' and surcharge of 2.5% per month as illegal, unreasonable and oppressive;

'b. Declaring the imposition and collection of the increase in tuition fees and other fees not approved by the Department of Education and Culture as illegal and ordering the refund thereof to the plaintiffs;

'c. Ordering the defendants to jointly and severally pay plaintiffs the amount of P2,000,000.00 as moral damages; the amount of P500,000.00 as exemplary damages; the amount of P100,000.00 as x x x nominal damages; the amount of P100,000.00 as attorney's fees; and costs of this suit;

'3. Plaintiffs pray for such other reliefs and remedy consistent with law and equity.'

"On August 12, 1996, after conducting a summary hearing and after the petitioners consigned the amount of P35,187.00, the respondent court issued a temporary restraining order of this tenor:

'WHEREFORE, the defendants are hereby restrained from imposing on the plaintiffs any amount, except the total amount due upon enrollment, as reflected in the Schedule of Fees for Grades 4 and 8.

`Set the hearing of the application for preliminary injunction on August 21 and 22, 1996, all at 3:00 P.M.'

"Meanwhile, the private respondents tendered their answer dated September 13, 1996. They averred that it was not on June 21, 1996 but on June 28 that petitioner Glynnia Crystal alone went to the respondent CIS to enroll Frances Loraine and Monica Claire by paying all school required fees, not with cash but with checks postdated to July 15, 1996 or at the end of July 1996. Her postdated checks were not accepted because the respondent CIS Board of Trustees had earlier decided that the petitioners should pay either in cash or in manager's check because on several instances in the past their personal checks either bounced or were delayed in encashment due to their advice not to cash the same until further notice. The land purchase deposit of P50,000.00 per student is not an additional requirement for enrollment or admission as it is refundable once the student graduates or otherwise decides to leave the school. It was imposed after prior consultation with the parents and upon agreement of all parents, including the petitioners, to enable the school to purchase a piece of land and to construct new school buildings and other facilities to which the CIS will transfer and occupy after the expiration of its lease contract with the Province of Cebu over its present site. The 2.5% surcharge per month refers to the late payment of the deposit under Option 3 which the petitioners themselves finally chose after they were not able to comply with Option 2 which was their earlier preference.

"The land purchase deposit of P50,000.00 [was] not required to be approved by DECS since it [was] refundable. At most, only a prior consultation with the parents was necessary, which was done. It became operational in the school year 1995-96 and the petitioners then voluntarily deposited the initial amount of P25,000.00 under Option 2, or P12,500.00 each for Monica Claire and Frances Loraine Crystal. The three other installments of P25,000.00 each to complete the total of P100,000.00 for the two children were due on August 31, 1995, October 31, 1995 and January 31, 1996. Later on, however, the petitioners requested that their land purchase deposit of P25,000.00 be applied to the outstanding tuition fees of their children so that the latter could take their final exams in the schoolyear 1995-96 and that henceforth they would avail of Option 3 for their land purchase deposit. The respondents acceded. So at the beginning of the schoolyear 1996-97, there was due from the petitioners refundable land purchase deposit in the principal amount of P100,000.00 for the two children plus surcharge of P24,386.69. These amounts, together with petitioners' tuition fees for the schoolyear 1996-97 in the amount of P35,187.00, have remained unpaid to the school, although plaintiff's counsel informed the respondents by letter that the sum of P35,187.00 ha[d] been consigned with the respondent court. The private respondents thus counterclaimed for damages in the court below and prayed that petitioners' complaint be dismissed.

"On February 6, 1997, after a full-blown hearing on the petitioners' prayer for a writ of preliminary injunction, the respondent court issued its first assailed Order denying the writ and vacating the earlier TRO. It rationalized thus:

`The Court believes that a writ of preliminary injunction may be issued only upon clear showing of an actually existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations (*Sabalones vs. Court of Appeals*, 230 SCRA 79). Thus, to be entitled to injunctive writ, the right to be protected and the violation against the right must be shown (*Knecht vs. CA*, 228 SCRA 1).

`Plaintiffs (herein petitioners) at bar failed to show their right to injunctive relief against herein defendants. In other words, there is no clear showing of a right claimed by plaintiffs which necessitates their entitlement to injunctive writ. The records of the case, evidence and admissions of the parties showed that plaintiffs themselves caused the damage of losing one year [in the] education of their children, in failing to settle their school accountabilities on time upon enrollment. Since they failed to pay after choosing the `Options', the plaintiffs have no right or standing.

Prefatorily, it is worth recalling that during the hearing, the plaintiffs expressly manifested their capacity to pay the refundable land purchase deposit; their willingness to post a (bond of a) million pesos made the Court suggest to them to pay their overdue account 'under protest', until the question is resolved so that the children could be admitted to school. No payment was tendered. Defendants (herein private respondents) in addition, speaking through Mr. Herbert E. Buot, Chairman of defendant school's Board of Trustees, even offered to waive the surcharges and stick to the required deposit of only P100,000.00 for the two students. Still no payment.

Plaintiffs question the legality of the imposition of the P50,000.00 per student refundable land purchase deposit as not being authorized by proper authorities, yet ironically, they paid the first quarterly installment on November 9, 1995 after they opted to choose Option 2 and later, Option 3. Be that as it may, evidence of the plaintiffs failed to show that such was not authorized or further needs authorization. Whether or not plaintiffs intentionally omitted or misinformed the DECS, the certifications and letters of Dr. Dioko and Dr. Oliva, never mentioned the fact that a 'Refundable Land Purchase Deposit' is an illegal imposition. A closer examination o[f] the evidence presented [shows that] a deposit is illegal if it is part of the school fees or a fee which represents [an] increase in tuition without approval from the DECS. Since it is not, the deposit being only an agreement between the parents and the school, nothing would then be illegal [or would need] the approval of a third party.

Finally, the province of injunction is to keep and preserve the thing in status quo. Considering that up to [this] date, [which] is already the last quarter of the school year, the prayer for the issuance of the writ of preliminary injunction, assuming arguendo that it has a basis in law, is academic and no longer possible."[5]

Petitioners' Motion for Reconsideration of the RTC Order was denied on April 30, 1997.

On May 26, 1997, petitioners filed before the CA a special civil action for certiorari under Rule 65. They contended that the RTC had acted without or in excess of its jurisdiction or with grave abuse of discretion when it issued its Order.

In the interim, the CA issued a Temporary Restraining Order enjoining respondents from collecting from petitioners the questioned land purchase deposit of P50,000 per student. It also set for hearing on July 24, 1997, petitioners' prayer for a writ of preliminary injunction. During the hearing, it was informed that petitioners had enrolled their children at the Colegio Immaculada Concepcion.

As already stated, the appellate court promulgated the assailed Decision on March 16, 1998. It subsequently denied on August 10, 1998, petitioners' Motion for Reconsideration.

Ruling of the Court of Appeals

The Court of Appeals held that the RTC committed no grave abuse of discretion in denying petitioners' prayer for the issuance of a writ of preliminary prohibitory and mandatory injunction. The former held that petitioners had not shown the existence of a right that was free from doubt.

The CA explained that "Monica Claire and Frances Lorraine's right to admission in the respondent CIS, a private school, is not absolute but is rather subject to fair, reasonable and equitable admission x x x requirements, x x x. Consequently, the respondents' adamant posture that they cannot be compelled to re-enroll the petitioners' children unless they comply with the requirement of paying the refundable land purchase deposit, is not without legal propping. More so, because as found by the respondent court, the deposit was appropriately discussed and approved by all the parents, including the petitioners. It was adopted as a school policy to meet the imminent contingency of the school having to relocate itself elsewhere due to the forthcoming expiration of its lease contract with the Province of Cebu on April 1, 1999 and the obstinate refusal of the latter to renew the same."

The appellate court rejected petitioner's contention that they had not participated in the deliberations, and that the

school had not consulted them about the land purchase deposit. It held that the RTC had not given credence to such contention, which was a factual question outside the province of certiorari. It further noted the "distinct and overriding consideration that of all the parents in the respondent school, only the herein petitioners have gone the way of the maverick, even as the school had in the past bent over backwards in accommodating their delayed or late payment of school dues. They have thus unduly strained their relationship with the school."

Finally, the CA ruled that a writ of preliminary mandatory injunction was no longer urgently or permanently necessary, because Monica Claire and Frances Lorraine were already enrolled in another school.

Hence, this Petition.[6]

The Issues

Petitioners raise the following issues for our consideration:

"I

Whether the respondents' insistence on the land purchase deposit which is judicially admitted by them as not a precondition or an additional requirement for enrollment is a valid challenge to the petitioners' right to enrollment.

"II

Whether or not the minor children have a clear and legal right to be admitted to respondent school.

"III

Whether or not respondents have the right to reject or bar the petitioners' children from enrollment for refusal to pay the land purchase deposit which is judicially admitted as [a] non-enrollment [requirement].

"IV

Whether or not the Court of Appeals erred in not issuing the writ of a preliminary mandatory injunction."[7]

In the main, the Court is called upon to determine whether petitioners are entitled to a writ of preliminary mandatory and prohibitory injunction.

The Court's Ruling

The Petition is devoid of merit.

Main Issue:

Writ of Preliminary Mandatory and Prohibitory Injunction

A writ of preliminary injunction is issued only upon proof of the following: (1) a clear legal right of the complainant, (2) a violation of that right, and (3) a permanent and urgent necessity for the writ to prevent serious damage.[8]

Unlike an ordinary preliminary injunction which is a preservative remedy, a writ of preliminary mandatory injunction requires the performance of a particular act that tends to go beyond maintaining the status quo and is thus more cautiously regarded[9] Hence, the applicant must prove the existence of a right that is "clear and unmistakable." [10]

In the present case, petitioners have failed to show that they have a clear and unmistakable right which has been violated. Neither have they shown permanent and urgent necessity for the issuance of the writ.

Clear and Unmistakable Right

Petitioners contend that they have a clear and unmistakable right to be enrolled in the Cebu International School. We disagree. The right to enroll in a private school is not absolute; it is subject to "fair, reasonable and equitable requirements."^[11]

In this case, petitioners have the right or standing to pray for the issuance of an injunctive writ, because they failed to pay the required school fees on time, that is, upon the enrollment of Monica Claire and Frances Lorraine Crystal. Instead of paying in cash or manager's check as required by respondent school, Glynna Crystal, mother of the two girls, used personal checks in the total amount of P35,187. The cashier of respondent school, complying with the school policy regarding the payment of tuition fees, refused to accept these personal checks.

Moreover, the past credit history of petitioners did not help them in this instance. Not only had their personal checks bounced several times in the past, but these had been postdated as well; sometimes they were not even encashed upon petitioners' advice. In the present case, by the time the amount was consigned to court, the enrollment period had lapsed, resulting in Monica Claire and Frances Lorraine's non-admission to respondent school. Hence, when they filed the case, they were no longer students in good standing.

No Urgent and Permanent Necessity

Even assuming that petitioners have clear and unmistakable legal right, they are still not entitled to a writ of preliminary mandatory injunction. They have not shown any urgent and permanent necessity for it, considering that Monica Claire and Frances Lorraine are already enrolled at the Colegio de Immaculada Concepcion. In other words, there is no more need for the issuance of a writ of mandatory injunction to compel the school to admit them.

In sum, we hold that petitioners have not shown that they are entitled to the writ. Accordingly, we find no more need to resolve the other issues raised in this case.

WHEREFORE, the Petition is DENIED, and the assailed Decision and Resolution AFFIRMED. Costs against petitioners.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Spelled "Loraine" in other parts of the record.

[2] Penned by Justice Salvador J. Valdez, Jr. and concurred in by Justices Emeterio C. Cui (Division chairman) and Corona Ibay-Somera.

[3] Assailed CA Decision, p. 18; rollo, p. 57.

[4] Assailed RTC Order dated February 6, 1997, p. 3; rollo, p. 65. This was written by Judge Leonardo B. Cañares.

[5] Assailed CA Decision, pp. 2-7, rollo, pp. 41-46.

[6] The case was deemed submitted for decision on December 14, 1999, upon the Court's receipt of respondents' Memorandum, signed by Atty. Erlinda C. Boiser-Ramos of E.B. Ramos & Associates. Filed earlier (on November 22, 1999) was petitioners' Memorandum, signed by Atty. Anastacio T. Muntuerto Jr. of Muntuerto Almendras Miel Cavada Law Offices.

[7] Petitioners' Memorandum, pp. 8-9; rollo, pp. 233-34.

[8] Prosperity Credit Resources, Inc. v. CA, 301 SCRA 52, January 15, 1999, citing *Pelejo v. CA*, 117 SCRA 665, October 18, 1982.

[9] *Id.*, citing *Manila Electric Railroad and Light Company v. Del Rosario*, 22 Phil. 433, March 29, 1912; and *Bautista v. Barcelona*, 100 Phil. 1078, March 29, 1957.

[10] *SBMA v. Universal International Group of Taiwan*, GR No. 131680, September 14, 2000, per Panganiban, J.

[11] Section 5 (3), Article XIV of the 1987 Constitution, provides: "Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements."

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