

ISMAEL A. MATHAY, JR., IN HIS CAPACITY AS MAYOR OF QUEZON CITY, PETITIONER, VS. FELT FOODS, INC., RESPONDENT.

G.R. No. 137149. July 28, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.

This is a petition for review of the decision rendered by the Court of Appeals in CA- G.R. SP No. 49187 dated October 20, 1998 sustaining the orders issued by Branch 84 of the Regional Trial Court of Quezon City dated March 24, 1998 and July 20, 1998 which granted the issuance of a writ of preliminary mandatory injunction to compel herein petitioner to allow the respondent to re-open and operate its restaurant and cocktail lounge "Club Georgio" beyond the expiration of its temporary business permit.

On May 14, 1997 petitioner issued a temporary business permit valid until December 31, 1997 in favor of the respondent to operate its business "Club Georgio". Sometime in November 1997 there were police reports that the respondent violated the terms of the business permit e.g., lack of sanitary permit, occupational and health permits of its employees. Thus, on November 27, 1997 petitioner ordered the closure of the said establishment and ordered the City Legal Department to investigate the respondent's reported violations of the terms of its business permit. Due notice was sent to the respondent through its general manager, Mr. Amil Yap, to explain his side but Mr. Yap refused or failed to appear before the investigating body. Upon a finding that there were violations of the terms of the business permit the petitioner cancelled it on December 15, 1997. On December 31, 1997 respondent's temporary business permit expired. On February 16, 1998 respondent filed an action with the Regional Trial Court of Quezon City to annul the petitioner's closure order alleging that the said order was issued without due process and prayed for the issuance of a writ of preliminary mandatory injunction to compel petitioner to allow respondent to re-open and resume operation of its business. Respondent also alleged that the employees of the club and its stockholders will suffer irreparable damage from the continued closure of the business. On February 25, 1998 petitioner filed a motion to dismiss the complaint on the ground that the cause of action has been mooted by the expiration of the complainant's temporary business permit on December 31, 1997; petitioner argued that the expiration of the said permit divested respondent of any legal basis to compel the petitioner to re-open the business establishment. On the same day, petitioner received notice of the questioned order dated February 23, 1997 issued by the regional trial court granting the respondent's prayer for the issuance of a writ of preliminary mandatory injunction upon posting of a bond in the amount of one hundred thousand pesos. The trial court upheld respondent's claim of irreparable damage due to the continued closure of the business as basis for the issuance of the writ. The petitioner's motion to dismiss was denied by the trial court and his motion for reconsideration from the said order of denial and the motion to lift writ of preliminary mandatory injunction were all denied by the said court.

Petitioner filed a petition for certiorari with the Court of Appeals to annul the order granting the questioned writ and the order denying the motion to dismiss. The Court of Appeals dismissed the petition stating that the regional trial court did not commit grave abuse of discretion in issuing the writ and that the factual basis for the

respondent's alleged violation of the business permit may be threshed out before the trial court when the case is heard on the merits.

The petitioner filed this petition for review reiterating its argument that the cause of action has been mooted by the expiration of the respondent's business permit and that the trial court exceeded its jurisdiction in ordering petitioner to re-open the subject establishment after the business permit has expired. The said court in effect usurped the administrative function of the petitioner and created an unlawful situation wherein the respondent is operating its business without the necessary business permit. Petitioner also maintains that the purported irreparable damage suffered by the respondent due to the closure of its business may be avoided by applying for a new business license. Petitioner contends that there is no legal nor factual basis for the issuance of the challenged writ.

The private respondent filed comment to the petition. Respondent argues that the grant or denial of a writ of injunction rests upon the sound discretion of the trial court and the exercise of such discretion will not be disturbed by a higher court unless the writ was issued with patent abuse of discretion. Respondent asserts that it is the petitioner who committed grave abuse of discretion in issuing the closure order of November 27, 1997 without just cause, the absence of which became evident when the petitioner failed to establish the existence of just cause when the respondent's prayer for injunctive relief was under consideration by the trial court. The respondent adopts the ruling made by the Court of Appeals that the existence of a valid factual basis for the closure order may be determined when the case is heard on the merits.

The petition has merit.

The complaint filed by the respondent before the trial court is captioned "For declaration of nullity of the closure order and specific performance with prayer for the immediate issuance of a writ of preliminary mandatory injunction" and the cause of action of the respondent is the alleged violation of its property right under the license to operate in view of the closure order issued by the petitioner prior to the expiration of the business license. The primary relief prayed for is the annulment of the closure order dated November 27, 1997 and for the issuance of a writ of mandatory injunction to compel petitioner to allow respondent to re-open its business. The primary issue therefore is the validity of the closure order of November 27, 1997 and the principal right asserted by the respondent is the right to do business under the license issued by the petitioner. Accordingly, when respondent's business license expired on December 31, 1997 respondent ceased to have a legal right to do business which may be the proper subject of judicial relief and when the writ of preliminary mandatory injunction was issued by the trial court on February 23, 1998 there was no more legal right in favor of the respondent for the courts protect. Whether the closure order was issued with or without just cause has been mooted by the expiration of the respondent's business license from which respondent derived its cause of action. In this regard, both the trial court and the appellate court erred in upholding the validity of the writ of preliminary mandatory injunction. The said writ is hereby dissolved.

It is a widely accepted rule that courts of law will not assume jurisdiction over a case when it has been rendered moot by a supervening event such as the expiration of a contract forecloses the complainant's right to demand specific performance under the terms of the expired contract from the defendant.[1] Any damage or loss suffered by the complainant from the alleged unlawful act of the defendant under the terms and during the existence of the expired contract may be remedied by a claim for damages and not by a writ of injunction to enjoin the effects of the expiration of the contract.[2] We note that the respondent's complaint before the trial court does not claim damages for the alleged unlawful closure of the respondent's business.

WHEREFORE, the petition is granted. The decision rendered by the Court of Appeals is hereby set aside. The

writ of preliminary injunction issued by the trial court is hereby dissolved on the ground that the respondent's cause of action is mooted by the expiration of its business permit on December 31, 1997. The case before the regional trial court is hereby ordered dismissed.

SO ORDERED.

Romero, J. (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Bautista vs. Board of Energy, 169 SCRA 167; Gancho-on vs. Secretary of Labor, 271 SCRA 201; Rosario N. Lopez vs. Perfecto Yasay, G.R. No. 126585, March 9, 1999; NAIA vs. Court of Appeals, G.R. No. 120851, May 14, 1997.

[2] Chua vs. Court of Appeals, G.R. No. 113886, February 24, 1998.

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