

FELIPE SY DUNGOG, PETITIONER, VS. COURT OF APPEALS, JUAN A. GATO, IN HIS OFFICIAL CAPACITY AS RTC SHERIFF, LAPU-LAPU CITY AND CARLOS GOTHONG LINES, INC., RESPONDENTS.*G.R. No. 139767. August 05, 2003*

Ponente: CARPIO, J.

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This petition for review on certiorari[1] assails the Decision[2] dated 14 May 1999 of the Court of Appeals in CA-G.R. SP No. 48788, as well as the Resolution dated 24 August 1999 denying the motion for reconsideration. The Court of Appeals dismissed outright the petition for certiorari, prohibition and mandamus filed by petitioner Felipe Sy Dungog ("Felipe") against respondents. The petition questioned the propriety of the Order[3] dated 14 August 1998 ("Order") and the writ of preliminary injunction ("Writ") dated 18 August 1998 issued by the Regional Trial Court of Cebu, Lapu-Lapu City, Branch 53 ("trial court") in Civil Case No. 5020-L.

The Antecedents

Tracing the roots of this controversy, Felipe alleges[4] that he and his sister, Fortune, agreed to sell their lots in Canjulao, Cebu, through their parents, Juan L. Dungog and Emma S. Dungog ("Spouses Dungog"). The Spouses Dungog convinced other lot owners in Canjulao to sell their lots either directly to them or to Felipe and his sister. On 31 December 1996, the Spouses Dungog entered into a Contract to Sell ("Contract") with private respondent Carlos A. Gothong Lines, Inc. ("Gothong Lines") covering several lots in Canjulao. The lots which the Spouses Dungog contracted to sell to Gothong Lines belonged to various individuals as listed in the Contract's Annex "A"[5] which specified the corresponding approximate land areas of each lot. Among these was Lot 1031-F registered in the name of Felipe and covered by Transfer Certificate of Title No. 10359 of the Register of Deeds of Lapu-Lapu City. Under the Contract, Gothong Lines was to pay on installment basis the purchase price of P65,520,475.00 computed at P500 per square meter. Thus, Gothong Lines paid a down payment of P12,000,000.00. For the balance of P53,520,475.00,[6] Gothong Lines issued 15 postdated checks of P3,568,031.00 each beginning on 31 January 1997 as payment for 15 equal monthly installments. Gothong Lines made good all the checks, except the last 4 checks dated 30 December 1997, 31 January 1998, 28 February 1998 and 30 March 1998, which bounced due to Gothong Lines' stop payment order.

Felipe alleges further that as of 31 December 1997, his parents had delivered 66 parcels of land to Gothong Lines with a total area of 101,104.20 square meters valued at P50,552,100.00. Felipe also states that as of the same date, Gothong Lines had paid P51,248,345.00 in encashed checks plus the initial down payment of P12,000,000.00. This left an overpayment of P696,245.00 in the hands of the Spouses Dungog. Felipe claims, however, that despite Gothong Lines' stop payment order of its last four checks, the Spouses Dungog still delivered in February 1998, 8 parcels of land with a total land area of 11,590 square meters valued at P5,795,000.00. Among those delivered was Lot 1031-F. The Spouses Dungog demanded payment for these 8 parcels of land, but Gothong

Lines refused to pay. The Spouses Dungog became frustrated with Gothong Lines' complete silence on their demands for payment, as well as the earlier stop payment order on the last 4 checks. Thus, the Spouses Dungog informed Gothong Lines in a letter dated 18 June 1998 that they would no longer push through with their offer to sell the remaining lots.

On 6 July 1998, Gothong Lines filed a complaint for Specific Performance, Damages with Writ of Preliminary Mandatory Injunction against the Spouses Dungog to enforce the Contract. Gothong Lines faulted the Spouses Dungog for non-delivery of some of the parcels of land in breach of the Contract. Gothong Lines alleged that while the total amount of P51,248,348.26 paid to the Spouses Dungog corresponds to 102,496.69 square meters, the Spouses Dungog actually delivered to Gothong Lines only 100,613.69 square meters. Gothong Lines claimed that it paid an excess of P941,848.00[7] corresponding to 1,883 square meters. To protect its interest, Gothong Lines ordered the bank to stop payment on the remaining postdated checks. Gothong Lines asked the trial court to issue a writ of preliminary injunction to restrain the Spouses Dungog from canceling the Contract and from preventing its representatives and vehicles from passing through the properties subject of the Contract. Gothong Lines offered to post a bond of P500,000.00 and consigned the P4,048,950.00 representing the balance of the purchase price.

Traversing Gothong Lines' allegations, the Spouses Dungog contended that it was Gothong Lines which breached the Contract by stopping payment on the last 4 checks. The Spouses Dungog also charged Gothong Lines with competing with them in acquiring one of the lots subject of the Contract. They further countered that Gothong Lines violated a verbal agreement between them not to develop the roads until after 30 June 1998, the last day for the Spouses Dungog to deliver and turn over the lots. The Spouses Dungog opposed Gothong Lines' application for a writ of preliminary injunction on the ground that Gothong Lines violated the terms of the Contract and the other contemporaneous agreements between them.

Based on the pleadings and affidavits presented by the parties, the trial court granted on 14 August 1998 Gothong Lines' prayer for injunction. The dispositive portion of the Order reads:

WHEREFORE, in the light of the foregoing considerations, plaintiff's application for the issuance of a writ of preliminary injunction is GRANTED. Consequently, after the filing and approval of a bond in the amount of Three Hundred Thousand Pesos (P300,000.00), let a writ of preliminary injunction issue, enjoining defendants, their representatives, or anyone acting in their behalf; (a) from canceling the contract to sell dated December 31, 1996; and (b) from disallowing or preventing the entry and exit of plaintiff's vehicles and those of its representatives through Lot 1031-F and other undelivered lots concerned.[8]

Based on this Order, the trial court issued the Writ on 18 August 1998 which the sheriff served on the same date.

Felipe assailed the Order and the Writ in a special civil action for certiorari before the Court of Appeals. The appellate court, however, dismissed outright Felipe's petition. The appellate court also denied on 24 August 1999 Felipe's motion for reconsideration. Thus, Felipe filed the instant petition questioning the propriety of the writ of preliminary injunction issued by the trial court.

The Rulings of the Trial Court and the Court of Appeals

In granting the Writ, the trial court stated -

There is no dispute that plaintiff has already paid defendants the amount of P51,248,348.26 out of the total consideration of P65,520,475.00. Plaintiff has also deposited with the Office of the Clerk of Court the amount of P4,048,950.00, leaving a balance of P10,223,176.74.

Plaintiff had already started the road development in the properties delivered to it. In other words, it has already spent much to develop the properties which form the bulk of the parcels of land subject of the contract.

Ingress to and egress from plaintiff's development activities lie on an undelivered parcel of land. Through it pass the vehicles, equipment, supplies and materials, as well as the workers, required by the project. The closure of this passage has apparently stymied the development in the area.

About 78% of the properties are in the hands of plaintiff. Access to these properties is under the control of defendants, the entrance being located in Lot 1031-F, one of the remaining undelivered lots. Since the entrance gate has been closed by defendants, it strikes the mind of the court that Lot 1031-F and the other undelivered lots have now, in a manner of speaking, imprisoned the delivered properties.

It is not therefore hard to see that the closure of the entrance gate has worked to the prejudice of plaintiff and will certainly jeopardize the development work in the delivered properties. Elementary justice and the spirit of fair play thus dictate that the status quo ante, which is the situation before the closure when plaintiff's representatives were able to pass through Lot 1031-F, be restored.

Insofar as defendants threatened cancellation of the contract to sell, the Court has seen that out of the total area of 131,040.95 square meters covered by the contract, plaintiff had already paid for 102,496.69 square meters, and that it had deposited P4,048,950.00 to pay for some of the undelivered parcels. It is but fair that such a move be, in the meantime, disallowed.[9]

In dismissing outright Felipe's petition for certiorari, prohibition and mandamus assailing the trial court's Order and the Writ, the Court of Appeals stated -

The petition should be dismissed outright, the petitioner has no standing here. He may be the owner of the lot in question but he is not a party litigant in the case a quo. His being a son of defendant spouse in the lower court does not give him the capacity to sue. Of course, he is not without legal remedy to protect his interest.[10]

The Issue

In his Memorandum, Felipe narrows the inquiry to -

MAY PETITIONER BE DEPRIVED OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW AND PAYMENT OF JUST COMPENSATION FOR THE BENEFIT OF PRIVATE RESPONDENT?[11]

Felipe laments that the dismissal of his petition resulted in the outright confiscation of his property for the private use of Gothong Lines, without due process of law and just compensation. Felipe claims that in dismissing his petition, the Court of Appeals effectively sustained the trial court's Order divesting him of his rights over Lot 1031-F.

The question of whether Gothong Lines may demand the turn over of the parcels of land listed in Annex "A" of the Contract is not our concern here. The issue in this petition is whether the Court of Appeals erred in dismissing Felipe's petition.

The Court's Ruling

The petition is bereft of merit.

Dismissal by the Court of Appeals of Felipe's petition was proper.

Felipe committed a procedural blunder in filing a special civil action for certiorari to assail the Order and the Writ. Felipe was not a party in Civil Case No. 5020-L. He could not, therefore, assail the writ of preliminary injunction through a petition for certiorari before the Court of Appeals. As correctly pointed out by the Court of Appeals, Felipe does not possess the requisite standing to file such suit.

In *Ciudad Real v. Court of Appeals*,[12] this Court ruled that there is grave abuse of discretion if the appellate

court recognizes the standing of a party, not a litigant in the trial court proceedings, to join a petition for certiorari. The Court explained:

Worse was the ruling of the respondent appellate court sanctioning the standing of Magdiwang Realty Corporation to join said petition for certiorari. As the records show, Magdiwang filed a Motion for Intervention on July 18, 1989 invoking its alleged Memorandum of Agreement with Doña Juana Development Corporation dated July 15, 1982. The trial court, however, denied this motion and Magdiwang did not question the ruling in the appellate court. The ruling thus, became final. After about two (2) years or on August 27, 1991, Magdiwang again filed a Motion to Substitute and/or Join as Party/Plaintiff relying on the same Memorandum of Agreement. The trial court similarly denied the motion, and the denial also attained finality as Magdiwang did not further challenge its correctness. Despite the finality of the order denying Magdiwang's intervention way back in 1989, the respondent court in its Decision of August 20, 1992 recognized the standing of Magdiwang to assail in the appellate court the Compromise Agreement. Again, this ruling constitutes grave abuse of discretion for Magdiwang was not a party in interest in Civil Case No. Q-35393.

The wisdom of this ruling is all too apparent. If a person not a party to an action is allowed to file a certiorari petition assailing an interlocutory order of the trial court, such as an injunctive order and writ, proceedings will become unnecessarily complicated, expensive and interminable. Eventually, this will defeat the policy of our remedial laws to secure party-litigants a speedy and inexpensive disposition of every action.

Felipe could have simply intervened^[13] in the trial court proceedings to enable him to protect or preserve a right or interest which may be affected by such proceedings. A motion to intervene may be filed at any time before rendition of judgment by the trial court.^[14] The purpose of intervention is not to obstruct or unnecessarily delay the placid operation of the machinery of trial. The purpose is merely to afford one, not an original party but possessing a certain right or interest in the pending case, the opportunity to appear and be joined so he could assert or protect such right or interest.^[15] Indeed, Felipe could have easily joined his parents as defendants in resisting the claim of Gothong Lines.

A resolution affirming the Court of Appeals' outright dismissal of Felipe's petition for these reasons would have been sufficient. Nevertheless, we deem it best to address the propriety of the issuance by the trial court of the writ of preliminary injunction before writing *finis* to this petition.

Issuance of writ of preliminary injunction was also proper.

Preliminary injunction is an order granted at any stage of an action, prior to the judgment or final order, requiring a party, court, agency or person to perform or to refrain from performing a particular act or acts.^[16] A preliminary injunction, as the term itself suggests, is merely temporary, subject to the final disposition of the principal action. Its purpose is to preserve the status quo of the matter subject of the action to protect the rights of the plaintiff during the pendency of the suit. Otherwise, if no preliminary injunction is issued, the defendant may, before final judgment, do the act which the plaintiff is seeking the court to restrain. This will make ineffectual the final judgment that the court may afterwards render in granting relief to the plaintiff.^[17]

The issuance of a writ of preliminary injunction rests entirely within the discretion of the court and is generally not interfered with except in cases of manifest abuse.^[18] The assessment and evaluation of evidence in the issuance of the writ of preliminary injunction involve findings of facts ordinarily left to the trial court for its conclusive determination.^[19]

We find that there was adequate justification for the issuance of the assailed writ of preliminary injunction. There is no dispute that the Spouses Dungog entered into the Contract with Gothong Lines which included Lot 1031-F

owned by Felipe. Felipe admitted that he authorized his parents to sell this lot. He also admitted that his parents had delivered to Gothong Lines Lot 1031-F along with other parcels of land. However, the Spouses Dungog threatened to cancel the Contract and to deny Gothong Lines passage through Lot 1031-F allegedly due to non-payment of the subsequent installments.

In applying for the Writ, Gothong Lines sought to restrain in the meantime the Spouses Dungog from canceling the Contract in order not to render the judgment ineffectual. Gothong Lines also sought to preserve its right of way through Lot 1031-F to maintain access to the other parcels of land previously delivered by the Spouses Dungog to Gothong Lines.

A careful reading of the trial court's assailed Order discloses that the Writ enjoined the cancelation of the Contract on the basis of Gothong Lines' substantial performance of the Contract. The trial court also enjoined the closure of the entrance gate in Lot 1031-F to preserve the status quo ante.

Under Section 3, Rule 58[20] of the 1997 Rules on Civil Procedure, a preliminary injunction is proper when the plaintiff appears entitled to the relief demanded in the complaint. The trial court found that Gothong Lines had already paid P51,248,348.26 out of the total consideration of P65,520,475.00. Gothong Lines also consigned with the court an additional P4,048,950.00 leaving a balance of P10,223,176.74. The trial court likewise found that 78% of the properties were already in the possession of Gothong Lines. Moreover, the status quo, which is the last actual peaceable uncontested status that preceded the controversy,[21] was that Gothong Lines had access to the lots subject of the Contract through the entrance gate in Lot 1031-F. That is why Gothong Lines commenced construction of its pier and the development of the roads within the parcels of land covered by the Contract. The issuance of the Writ would no doubt preserve the status quo between the Spouses Dungog and Gothong Lines that existed prior to the filing of the case. We agree with the trial court that the status quo should be maintained until the issue on the parties' respective rights and obligations under the Contract is determined after the trial.

Clearly, in issuing the Writ, the trial court did not forthwith deprive Felipe of his ownership of Lot 1031-F. Neither did the Writ have the effect of ousting Felipe from possession of the lot. The trial court did not rule on the merits of the case so as to amount to a deprivation or confiscation of property without due process of law or just compensation. There was no adjudication on the rightful possession or ownership of the contested parcels of land subject of the Contract. The trial court issued the injunction only as a preventive remedy to protect during the pendency of the action Gothong Lines' right to a final and effective relief.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Presiding Justice Jesus M. Elbinias, with Associate Justices Delilah Vidallon-Magtolis and Rodrigo V. Cosico concurring.

[3] Penned by Judge Benedicto G. Cobarde.

[4] Rollo, pp. 5-8.

[5] Ibid., pp. 38-41.

[6] Paragraph 4 of the Contract to Sell reads:

- That the contract price is SIXTY FIVE MILLION FIVE HUNDRED TWENTY THOUSAND FOUR HUNDRED SEVENTY FIVE (P65,520,475.00) PESOS, Philippine Currency, computed at FIVE HUNDRED (P500.00) PESOS per square meter; That the sum of TWELVE MILLION (P12,000,000.00) PESOS, Philippine Currency, shall be paid by the VENDEE as down payment upon execution of this contract; said amount is hereby acknowledged received by the VENDORS; The remaining sum of FIFTY THREE MILLION FIVE HUNDRED TWENTY THOUSAND FOUR HUNDRED SEVENTY FIVE (P53,520,475.00) PESOS, Philippine Currency, shall be paid in FIFTEEN (15) equal monthly installments of THREE MILLION FIVE HUNDRED SIXTY EIGHT THOUSAND THIRTY ONE AND 66/100 (P3,568,031.66) PESOS, Philippine Currency; that of the monthly installments, VENDEE shall issue FIFTEEN (15) postdated checks in favor of the VENDORS, wherein the first check shall be payable on January 31, 1997.

[7] Should be P941,500.00, computed at P500 per square meter.

[8] Rollo, p. 34.

[9] Ibid., pp. 33-34.

[10] Ibid., p. 28.

[11] Ibid., p. 194.

[12] G.R. No. 107888, 4 January 1994, 229 SCRA 71.

[13] Rule 19, Section 1 of the 1997 Rules of Civil Procedure reads:

SECTION 1. Who may intervene. - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

[14] Rule 19, Section 2, *ibid.*

[15] *Garcia, et al. v. David*, 67 Phil. 279 (1939).

[16] *Miriam College Foundation, Inc. v. Court of Appeals*, G.R. No. 127930, 15 December 2000, 348 SCRA 265.

[17] *Republic v. Court of Appeals*, G.R. No. 128010, 28 February 2000, 326 SCRA 495.

[18] *Saulog v. Court of Appeals*, G.R. No. 119769, 18 September 1996, 262 SCRA 51.

[19] *Lopez v. CA*, G.R. No. 110929, 20 January 2000, 322 SCRA 686.

[20] SEC. 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;

(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.

[21] Bengzon v. Court of Appeals, G.R. No. L-82568, 31 May 1988, 161 SCRA 745.

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