

POWER SITES AND SIGNS, INC., PETITIONER, VS. UNITED NEON (A DIVISION OF EVER CORPORATION), RESPONDENT.

G.R. No. 163406. November 24, 2009

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Before a court grants injunctive relief, the following must be demonstrated: that complainant is entitled to the relief sought, the actual or threatened violation of complainant's rights, the probability of irreparable injury, and the inadequacy of pecuniary compensation as relief.[1] Otherwise, there is no basis for the issuance of a writ of injunction.

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court of the Decision[2] dated January 29, 2004 and the Resolution[3] dated April 28, 2004 of the Court of Appeals in CA-G.R. SP No. 72689.

Petitioner's Factual Allegations

Power Sites and Signs, Inc. (Power Sites) is a corporation engaged in the business of installing outdoor advertising signs or billboards. It applied for, and was granted, the necessary permits to construct a billboard on a site located at Km. 23, East Service Road, Alabang, Muntinlupa (the site).[4] After securing all the necessary permits, Power Sites began to construct its billboard on the site.

Subsequently, in March 2002, petitioner discovered that respondent United Neon, a Division of Ever Corporation (United Neon), had also began installation and erection of a billboard only one meter away from its site and which completely blocked petitioner's sign. Thus, on March 5, 2002, petitioner requested United Neon to make adjustments to its billboard to ensure that petitioner's sign would not be obstructed.[5] However, petitioner's repeated requests that respondent refrain from constructing its billboard were ignored,[6] and attempts to amicably resolve the situation failed.[7]

Respondent's Factual Allegations

In January 2002, United Neon and Power Sites separately negotiated with Gen. Pedro R. Balbanero to lease a portion of a property located at East Service Road, South Superhighway, Alabang, Muntinlupa City, in order to build a billboard on the premises.[8] Gen. Balbanero rejected Power Sites' proposal and decided to lease the premises to United Neon. Thus, on January 26, 2002, United Neon and Gen. Balbanero entered into a Contract of Lease (the lease contract).[9]

On January 28, 2002, United Neon registered the lease contract with the Outdoor Advertising Association of the Philippines (OAAP), in accordance with Article 11, Sec. 3.6 of the OAAP Code of Ethics/Guidelines.[10] By virtue of its registration of the Contract of Lease with the OAAP, United Neon alleged that it obtained the exclusive right to the line of sight over the leased property, in accordance with Article 11, Section 3.7 of the OAAP Code of Ethics/Guidelines.[11]

Sometime in February 2002, United Neon started construction of its billboard. Power Sites, after failing to lease the premises from Gen. Balbanero, negotiated with the owner of the adjacent property and secured its own lease in order to erect a billboard that would disrupt United Neon's exclusive line of sight.[12] To protect its rights, on March 6, 2002, United Neon urged Power Sites to relocate the latter's sign to another location, or to construct it in such a way that the sign would not obstruct the view of United Neon's billboard.[13]

Legal Proceedings

In a letter-complaint dated June 29, 2002, petitioner requested the Muntinlupa City Engineer and Building Official to revoke United Neon's building permit and to issue a Cease and Desist Order against it.[14] On July 4, 2002, the City Building Official, Engineer Robert M. Bunyi, referred the complaint to United Neon for comment:

This refers to your ongoing construction of signboard located at East Service Road, Alabang, City of Muntinlupa, which was granted Building Permit No. 12-02-05-357 dated May 22, 2002 and which is the object of an attached formal complaint x x x

Relative to the foregoing and per inspection conducted by this office, we have noted that your sign is 4 meters away from an existing and on going sign construction with building permit no. 12-02-02-111 which was granted earlier than your permit.

We therefore direct you to submit your position and all your related supporting evidence whether or not you violated the Code of Ethics of Advertisement which is expressly supported by the National Building Code (PD 1096) Rule V, Section 2.1 of the General Provision and to maintain status quo by desisting from all construction activities in the meantime that this matter is being studied for resolution by this office.[15]

However, before a resolution could be made by the City Building Official, Power Sites filed on July 1, 2002, a Petition for Injunction with Writ of Preliminary Injunction and Prayer for Temporary Restraining Order and Damages[16] against United Neon before the Regional Trial Court (RTC) of Muntinlupa City, which was raffled to Branch 256 and docketed as Civil Case No. 02-143.

After the filing of the parties' respective memoranda,[17] which took the place of testimonial evidence, the RTC granted petitioner's prayer for the issuance of a preliminary injunction in an Order dated August 1, 2002.[18] The Writ of Injunction was issued on the same day.[19] The RTC ruled:

After considering the arguments raised by both parties in their respective Memoranda, this Court finds that the plaintiff is entitled to the relief sought considering that the commission and/or continuance of the act of installing the signage by the respondent during the litigation would work grave injustice and irreparable damage to petitioner since it would surely cause immense loss in profit and possible damage claims from its clients because it would certainly cover the sign of the petitioner's clients.

x x x x

WHEREFORE, this Court finds the plaintiff's application for the issuance of a Writ of Preliminary Injunction to be meritorious and well taken.

Let therefore a Writ of Preliminary Injunction be issued against the respondent UNITED NEON to cease and desist from constructing/installing the signage and to dismantle any existing sign, girds [sic] or post that support said sign.

x x x x[20]

United Neon then filed a Petition for Prohibition and Certiorari with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction[21] before the Court of Appeals, which was docketed as CA-G.R. SP No.

72689. In brief, United Neon claimed that the grant of preliminary injunction was unwarranted, particularly because Power Sites only prayed for a prohibitory injunction in its original petition, but the Order went as far as to grant a mandatory injunction in favor of Power Sites. United Neon prayed that the Court of Appeals invalidate the RTC's Order and Writ dated August 1, 2002, issue a temporary restraining order enjoining the RTC from further proceeding with Civil Case No. 02-143, and, after hearing, enjoin the RTC from enforcing the August 1, 2002 Order.

After the parties' exchange of pleadings, the Court of Appeals invalidated the Order of the RTC dated August 1, 2002 and the Writ of Preliminary Injunction, but denied the prayer for prohibition, to wit:

To warrant the issuance of an injunction, whether prohibitory or mandatory, private respondent's right to the line of sight must be clear. In this case, there is a cloud of doubt as to private respondent's right to the claimed line of sight as petitioner had manifested prior registration of its billboard with the Outdoor Advertising Association of the Philippines (OAAP) which allegedly gave petitioner a protection of its exclusive right to the line of sight.

Injunction should be issued when there is a substantial challenge to the claimed right. The conflicting claims by the parties to the right to the line of sight present an impression that the right claimed by private respondent as its basis for the prayer for the injunctive relief is far from clear. While it is not required that private respondent's right be conclusively established at this stage, it is nevertheless necessary to show, at least tentatively, that it exists and is not vitiated by any substantial challenge or contradiction, such as has been made by petitioner.

Even the issue of the status quo ante cannot be determined clearly in this case. The status quo ante referred to by private respondent was seriously challenged by petitioner by claiming it was the first to build its structure. Hence, public respondent had no clear basis for the status quo ordered in the injunctive order.

x x x x

On the matter of the prayer for prohibition, it is incorrect and improper to declare public respondent incapable of rendering a fair trial due to the erroneous injunctive order issued. Petitioner may avail of other legal remedies if it truly believes that public respondent can no longer deliver fair judgment in this case.

WHEREFORE, premises considered, the petition is PARTIALLY GRANTED, as follows:

- The assailed Order dated August 1, 2002 and the Writ of Preliminary Injunction issued by public respondent in Civil Case No. 02-143 are hereby declared NULL AND VOID for having issued with grave abuse of discretion amounting to lack or excess of jurisdiction; and
- The prayer for prohibition is hereby DENIED for lack of merit.

SO ORDERED.[22]

Petitioner's Motion for Partial Reconsideration was denied by the Court of Appeals in a Resolution dated April 28, 2004.[23] Hence, this petition.

Arguments

In essence, Power Sites claims that the Court of Appeals gravely erred in invalidating the Writ of Preliminary Injunction for the following reasons:

1) Power Sites has a better right over the line of sight because it constructed its billboard ahead of the respondent and is therefore entitled to protection under the National Building Code. United Neon could not have begun construction ahead of Power Sites (allegedly in February 2002), since it only obtained its Building Permit in May

of 2002. Further, the alleged registration of the lease contract with the OAAP does not bind Power Sites, since the latter is not a member of the OAAP. In any event, proof of the alleged registration of the lease contract was not presented before the trial court; all that was submitted in evidence was an application letter to the OAAP.

2) Even if its original petition did not contain a prayer for the issuance of a mandatory injunction, its Memorandum before the trial court requested the grant of a mandatory injunction.[24] United Neon was still in the initial stages of construction at the time the original petition was filed; hence, Power Sites only prayed for the issuance of a preliminary prohibitory injunction to preserve the status quo. However, at the time the parties were required to file their respective memoranda, United Neon's structure was already fully completed. Thus, a preliminary mandatory injunction was required.

3) The Court of Appeals should have dismissed outright the Petition for Certiorari, since United Neon failed to attach all the relevant pleadings, in disregard of the Rules of Court.

On the other hand, United Neon claims that the Court of Appeals' Decision and Resolution were correct, and the trial court's Order dated August 1, 2002 and the writ of injunction were patently illegal, for the following reasons:

1) Power Sites has no clear and unmistakable right to be protected, since it failed to register its lease contract with the OAAP. In contrast, it is United Neon that has the exclusive right to the line of sight because United Neon began construction ahead of Power Sites, and registered its lease with the OAAP.

2) The issuance of the preliminary mandatory injunction by the RTC, which went beyond the allegations and prayer in the initiatory petition, constituted grave abuse of discretion amounting to lack or excess of jurisdiction.

3) Power Sites did not even have the required permits to construct a billboard, since all the permits issued by the Muntinlupa City government were issued to HCLC Resources and Development Corporation, and not to Power Sites.

4) Power Sites willfully violated the rules against forum shopping, since it sought the same relief from the Muntinlupa City Building Official and before the RTC.

Our Ruling

We find the grant of a preliminary mandatory injunction by the trial court not warranted. Consequently, we affirm the Decision of the Court of Appeals dated January 29, 2004 and its Resolution dated April 28, 2004 in CA-G.R. SP No. 72689.

Procedural Issue

The Court of Appeals properly exercised its discretion in giving due course to the petition

Power Sites claims that the Court of Appeals should not have entertained the petition for certiorari because United Neon failed to attach the requisite documentary evidence to its petition.

We are not persuaded. Section 1 of Rule 65 of the Rules of Court provides:

Section 1. Petition for certiorari. -- x x x

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

A plain reading of the provision indicates that there is no specific enumeration of the documents that must be appended to the petition, other than a certified true copy of the assailed judgment, order, or resolution. In Condes

v. Court of Appeals,[25] we held that the acceptance or rejection by the Court of Appeals of a petition for certiorari rests in its sound discretion. Thus:

x x x The initial determination of what pleadings, documents or orders are relevant and pertinent to the petition rests on the petitioner. Thereafter, the CA will review the petition and determine whether additional pleadings, documents or orders should have been attached thereto.

The appellate court found the present petition sufficient in form when it proceeded to decide the case on the merits, without raising any question as to the sufficiency of the petition. Acceptance of a petition for certiorari, as well as granting due course thereto is addressed to the sound discretion of the court. Where it does not appear, as in this case, that in giving due course to the petition for certiorari, the CA committed any error that prejudiced the substantial rights of the parties, there is no reason to disturb its determination that the copies of the pleadings and documents attached to the petition were sufficient to make out a prima facie case. (Emphasis supplied)

In the same manner, we find no reversible error when the Court of Appeals gave due course to the petition, since it evidently found that the documents attached to the petition were sufficient.

Substantive Issues

The applicant must show that it is entitled to the relief sought, and that acts are being undertaken in violation of the applicant's rights

We emphasize that at this stage of the proceedings, we are not concerned with the merits of the case, but only with the propriety of the issuance of the preliminary injunction by the trial court. After a painstaking review of the arguments and evidence presented by the parties, we find that petitioner was not entitled to the grant of a preliminary injunction for two reasons: first, the alleged right sought to be protected by the petitioner was not clearly demonstrated; second, the requirement of grave and irreparable injury is absent.

A preliminary injunction may be granted only where the plaintiff appears to be clearly entitled to the relief sought[26] and has substantial interest in the right sought to be defended.[27] While the existence of the right need not be conclusively established, it must be clear.[28] The standard is even higher in the case of a preliminary mandatory injunction, which should only be granted -

x x x in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation x x x.[29]

The evidence presented before us in support of a preliminary injunction is weak and inconclusive, and the alleged right sought to be protected by petitioner is vehemently disputed. We note that both parties allege that: (1) they began construction of their respective billboards first; (2) the billboard of the other party blocks the other's exclusive line of sight; (3) they are entitled to protection under the provisions of the National Building Code and OAAP Code of Ethics/Guidelines.[30] However, we are not in a position to resolve these factual matters, which should be resolved by the trial court. The question of which party began construction first and which party is entitled to the exclusive line of sight is inextricably linked to whether or not petitioner has the right that deserves protection through a preliminary injunction. Indeed, the trial court would be in the best position to determine which billboard was constructed first, their actual location, and whether or not an existing billboard was obstructed by another.

At this juncture, it is not even clear to us what relationship Power Sites has to the billboard that would entitle it to

seek an injunction, since the documents before us indicate that the barangay clearance and the Billboard/Signboard permit were issued to HCLC Resource and Development Corporation, while the Building Permit and Electrical Permit were issued to Mr. Renato Reyes So.[31] As regards the identity of these parties, the explanation thus far presented was -

HCLC Resource and Development Corp. (HCLC) is a corporation whose majority shares of stock are owned by Mr. Renato So, the same majority owner and President of Power Sites. HCLC and Power Sites are closely connected. HCLC was the entity which constructs the billboards of Power Sites, while the latter remains the owner of the billboards.

Needless to say, this flies in the face of the basic principle in corporation law - that a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected. Nonetheless, these are matters that are better resolved in the course of trial.

The damages alleged by petitioner can be quantified; it cannot be considered as "Grave and Irreparable Injury" as understood in law

It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial, and demonstrable. Here, there is no "irreparable injury" as understood in law. Rather, the damages alleged by the petitioner, namely, "immense loss in profit and possible damage claims from clients" and the cost of the billboard which is "a considerable amount of money"[32] is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in *Social Security Commission v. Bayona*: [33]

Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy. "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement". An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof. (Emphasis supplied)

Here, any damage petitioner may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages.[34] Thus, a preliminary injunction is not warranted. As previously held in *Golding v. Balatbat*, [35] the writ of injunction --

should never issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ rests in the probability of irreparable injury, the inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated January 29, 2004 in CA-G.R. SP No. 72689 declaring as null the August 1, 2002 Order of the Regional Trial Court of Muntinlupa City, Branch 256 and the Writ of Injunction in Civil Case No. 02-143, and denying the prayer for prohibition, and its Resolution dated April 28, 2004 denying the Motion for Reconsideration, are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro, Brion, and Abad, JJ., concur.

[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order No. 776 dated November 3, 2009.

[1] See *Golding v. Balatbat*, 36 Phil. 941 (1917).

[2] Rollo, pp. 36-46; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Eubolo G. Verzola and Edgardo F. Sundiam.

[3] *Id.* at 48-50; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Mario L. Guariña III and Edgardo F. Sundiam.

[4] *Id.* at 68-74; the records reflect that a barangay clearance was granted to HCLC Resources and Development Corporation on February 1, 2002. Mr. Renato Reyes So was granted a Building Permit and an Electrical Permit by the Muntinlupa City Engineer and Building Official on February 21, 2002. On that same date, HCLC Resources and Development Corporation was granted a Signboard/Building Permit. Mr. Renato So obtained an exemption from securing a Contractor's Permit and a Temporary Use Permit on February 15, 2001, and paid the required fees on February 21, 2002.

[5] *Id.* at 75.

[6] *Id.* at 77; on June 18, 2002, petitioner again wrote a letter to respondent reiterating that the proposal to share space was turned down, and appealing to respondent's sense of justice and fair play.

[7] *Id.* at 76; United Neon's President, Mr. Danny Lim, suggested that the space be shared on the site. However, petitioner's client was unwilling to accede to the suggestion. Thus, Mr. Lim's offer was declined. This decision was made known to respondent in a letter dated May 10, 2002.

[8] *Id.* at 117.

[9] *Id.* at 118-119.

[10] The trade practices of the outdoor advertising industry are regulated by the Outdoor Advertising Association of the Philippines (OAAP). Article 11, Section 3.6 of the OAAP Code of Ethics/Guidelines provides:

3.6 A duly signed memorandum of agreement, lease agreement or contract of lease with the site owner shall be required before an outdoor company can put up markers on a leased site. Markers must include a prominent sign indicating the company that has leased the site.

It is highly suggested that said document, together with the general details of the intended billboard structure, (such as display dimensions, whether single or double face and structure height), be registered with the Secretariat for recording purposes to protect its intended line of sight rights against possible challenge or debate by other outdoor companies.

[11] Article 11, Section 3.7 provides:

3.7 Once registered with the OAAP, the outdoor advertising firm shall have exclusive rights to the intended line-of-sight for the structure for a period of four (4) months from the date of registration. Failure to start construction of the structure within the prescribed four (4) month period to its registered dimensions shall render the said line-of-sight open.

The outdoor advertising firm shall have a period of one (1) year from the date of registration to complete the structure in accordance with its registered dimensions. At the expiration of the one (1) year period, the outdoor advertising firm's exclusive right to the line-of-sight shall pertain only to the line-of-sight of the structure, taking into consideration the dimensions thereof at the time.

[12] Rollo, pp. 121-123.

[13] Id. at 120.

[14] Id. at 96-108.

[15] Id. at 109.

[16] Id. at 52-59.

[17] Id. at 60-123; on July 28, 2002, petitioner and respondent simultaneously filed their respective Memoranda.

[18] Id. at 124-125; penned by Judge Alberto L. Lerma.

[19] Id. at 434.

[20] Id. at 124-125.

[21] Id. at 126-177.

[22] Id. at 45-46.

[23] Id. at 48-50.

[24] The Memorandum stated:

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Court issue a Writ of Preliminary Injunction directing respondent UNITED NEON to dismantle any existing sign, grids or post that support said sign and to cease and desist from installing the signage until the final resolution of the case.

[25] G.R. No. 161304, July 27, 2007, 528 SCRA 339, 349-350.

[26] Rules of Court, Rule 58; Sec. 3. See also Buayan Cattle Co., Inc. v. Quintillan, 213 Phil. 244, 254 (1984); Toyota Motor Philippines Corporation v. Court of Appeals, G.R. No. 102881, December 7, 1992, 216 SCRA 236, 251.

[27] Angela Estate, Inc. v. Court of First Instance of Negros Occidental, 133 Phil. 561, 572 (1968).

[28] Developers Group of Companies, Inc. v. Court of Appeals, G.R. No. 104583, March 8, 1993, 219 SCRA 715, 721.

[29] Manila Electric Railroad and Light Company v. Del Rosario, 22 Phil. 433 (1912).

[30] Rule V(B), Sec. 1 of the National Building Code's Implementing Rules provides that "signs shall adhere to the Code of Ethics for Advertising and Promotions and to the rules and regulations of the appropriate agency in charge of the conduct of business. In this connection, Sec. 3.3 of the OAAP Code of Ethics/Guidelines provides that parties must "avoid installation of an advertising sign that will cover another sign which has been existing."

[31] Supra note 4.

[32] Id.

[33] 115 Phil. 105, 110 (1962).

[34] Ollendorff v. Abrahamson, 38 Phil. 585 (1918).

[35] Supra note 1 at 946.

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