

MANILA INTERNATIONAL AIRPORT AUTHORITY, Petitioner, vs. POWERGEN, INC., Respondent.

G.R. No. 164299. February 12, 2008

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari[1] assails the October 16, 2003 decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 76415 and its June 25, 2004 resolution[3] denying reconsideration. The decision affirmed the trial court's January 21, 2003 order for the issuance of preliminary injunction,[4] January 23, 2003 writ of preliminary mandatory injunction[5] and March 24, 2003 order[6] denying reconsideration.

The antecedent facts follow.

In the early 1990s, the entire Metro Manila, including the airport area, started experiencing daily power outages, split power interruptions, voltage fluctuations and power surges. All this impaired the efficient functioning of the airport facilities and equipment, and essential public services.

Consequently, petitioner Manila International Airport Authority (MIAA) (which was then totally dependent on the Manila Electric Company [MERALCO] for its power requirements) had to remedy the situation. Its management decided to install a baseload power plant to provide all airport facilities continuous and adequate electric supply. As petitioner lacked both expertise and capability to undertake such a project, its management solicited contractors to build and operate this power plant on a Build-Operate-Own scheme. Petitioner prepared the terms of reference[7] and conducted a public bidding for the construction of the proposed power plant.

Respondent Powergen, Inc. submitted its bid. On April 4, 1994, petitioner issued a notice of award[8] to respondent. Thereafter, petitioner and respondent entered into a Power Generation Agreement (PGA).[9] Article 7.3 of the PGA stated:

7.3 MIAA OBLIGATIONS

(i)

The purchase and the payment of [Powergen, Inc.] of the minimum guaranteed energy consumption of Four Million KWH (4,000,000) per month at the privilege discount rate

(ii)

The purchase and payment of the energy requirement of MIAA above the minimum guaranteed energy consumption in accordance with the Sixth Schedule.

(iii)

To answer for whatever amount supply (sic) MERALCO may charge for the use on a standby basis of its power supply.

The agreement further provided that petitioner shall pay respondent energy fees based on the Sixth Schedule, to wit:

SIXTH SCHEDULE

DELIVERY OF POWER AND ENERGY

- Obligations of Parties

[Powergen, Inc.] hereby agrees to generate all the electric energy requirements of MIAA and MIAA hereby agrees to take at the high voltage side of the main transformer its electric-energy requirements delivered by [Powergen, Inc.] until the end of this Agreement.

- Delivered Energy

[Powergen, Inc.] shall generate electric energy and deliver it to MIAA, and MIAA shall take such electricity from [Powergen, Inc.]. The energy delivered shall be paid for by the MIAA pursuant to the terms and conditions as provided in No. 3 of this Schedule.

- Terms of Payment

MIAA will be billed on a monthly basis for the total consumed electrical energy taking into consideration the minimum guaranteed consumption whichever is higher.

3.1 All Energy Fees payable to [Powergen, Inc.] by MIAA during the fifteen-year Cooperation Period, including the period of Testing/Commissioning, will be computed as per the MERALCO Billing System less Forty Percent (40%) discount. Thus:

DISCOUNT RATE= MERALCO's Prevailing Rate

at Time of the Billing x 0.60

3.2 Guaranteed Minimum Energy Off-Take. The guaranteed minimum energy consumption of MIAA shall be 4,000,000 KWK/month and the corresponding energy fee will be computed as per the above formula.

On December 18, 1995, petitioner gave respondent a notice to proceed^[10] which provided:

With reference to the signed [PGA] between [MIAA] and [Powergen, Inc.], you are hereby notified to proceed with the above referenced Project in accordance with our Agreement, subject to the following conditions:

- The construction of an initial 7.250 MW (2 x 3.625) Power Station that will service our priority circuits within the MIAA complex;
- The above initial Power Station shall be part of the original bid proposal that was submitted to MIAA during the bidding and as such shall be subject to the conditions of the [PGA] with respect to pricing and other relevant provisions of it. Provided, however:
 - That the maximum (sic) guaranteed energy consumption of Four Million (4,000,000) KWH per month of MIAA, stipulated in Article 7.3 of the said contract, shall be ignored and MIAA shall not be liable to the purchase of such guaranteed consumption. Meanwhile, only the actual energy consumed KWH by MIAA shall be the basis for the computation of the operating fees.
 - That Article 7.3 shall be reimposed only when the KW capacity stipulated on the BOO Contract is attained.
 - The [Powergen, Inc.] shall abide by the relevant terms stipulated in the contract and in the Notice of Award for the operation of the diesel power station.

On the same day, respondent, through its president, Luisito C. Magpayo, signed the “Certified Acknowledgment of Receipt and Acceptance.”

Thereafter, the power station was constructed and operated by respondent, and petitioner paid the energy fees in accordance with the billings made by respondent. However, sometime in June 2000, petitioner discovered that MERALCO was charging a rate (P2.03 per KWH) lower than that respondent was collecting (P2.22 per KWH). Consequently, petitioner used the lower rate of P2.03 per KWH in its payments.

Complaining that petitioner did not comply with its contractual obligation under the PGA, respondent, on January 4, 2001, sued for reformation of contract in the Regional Trial Court of Pasig City, Branch 168. It asked the court to fix the rate at which petitioner should pay respondent; to reform the PGA and to direct petitioner to comply with the PGA and purchase from and pay to respondent the guaranteed minimum energy consumption of four million KWH in accordance with Article 7.3 of the PGA.[11] On July 24, 2001, respondent amended the complaint to include an application for temporary restraining order or preliminary injunction to enjoin petitioner from deducting from respondent’s future billings the alleged “overpayments” on the energy charge until the court finally decided the case.[12] On November 12, 2002, respondent filed an urgent motion for issuance of preliminary injunction[13] to compel petitioner to comply with its obligation under Article 7.3 of the PGA vis-à-vis the guaranteed minimum four million KWH of energy from respondent.

On January 21, 2003, the trial court issued an order granting respondent’s urgent motion.[14] Subsequently, on January 23, 2003, a writ of preliminary mandatory injunction was issued.[15]

Petitioner sought reconsideration with a motion to set aside the order of preliminary mandatory injunction and a motion to quash/lift the writ of preliminary injunction. It was denied.[16] Petitioner went up to the CA on a petition for certiorari.[17] The petition was dismissed. Petitioner then filed a motion for reconsideration which was again dismissed.[18] Hence, this petition.[19]

The issue centers on whether respondent is entitled to a preliminary mandatory injunction.

On one hand, petitioner contends that respondent has no right to the injunction because no irreparable injury or right to be protected exists. In granting respondent the writ of mandatory injunction, the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction. On the other hand, respondent maintains its right to insist on petitioner’s compliance with its contractual obligation. It asserts that the notice to proceed did not amend the PGA. In addition, respondent underscores the extreme urgency for the issuance of the preliminary mandatory injunction. Respondent claims that it will only be able to grant petitioner the discounted rates and preserve its own financial viability if the guaranteed minimum energy consumption agreed upon in Article 7.3 of the PGA is complied with. Moreover, should MIAA transfer its operation to Terminal 3, respondent will be ruined financially and may even close shop altogether.

We rule in favor of petitioner.

In assessing the issue of whether the injunction was proper, both the trial court and the CA closely examined whether the notice to proceed in fact amended the PGA. A careful perusal of the records, however, shows that such a determination touched essentially on the merits of the main action. Part of the relief requested by respondent in the trial court was to “[direct] the [petitioner] MIAA to comply with the [PGA] and purchase from and pay to respondent the minimum guaranteed energy consumption of four million KWH in accordance with Article 7.3 of the PGA.”[20]

It must be borne in mind that an injunction is a preservative remedy for the protection of one’s substantive right or interest,[21] issued to preserve the status quo of the things subject of the action or the relations between the

parties during the pendency of the suit.[22] The application for the injunctive writ is not a cause of action in itself but only a provisional remedy, a mere adjunct to the main suit.[23]

Moreover, as held in *Ortigas & Company Limited Partnership v. CA*: [24]

In general, courts should avoid issuing a writ of preliminary injunction which in effect disposes of the main case without trial. This is precisely the effect of the writ of preliminary mandatory injunction issued by the respondent appellate court. Having granted through a writ of preliminary mandatory injunction the main prayer of the complaint, there is practically nothing left for the trial court to try except the plaintiffs' claim for damages. (emphasis supplied)[25]

If this Court affirms the trial court and the CA, that is, if we decide the issue of whether the notice to proceed indeed amended the PGA, we will essentially be disposing of the main action and the trial court will have nothing more to try except what rate respondent should charge petitioner. Thus, we decline to issue judgment on a case which has not gone through trial. Under the circumstances, a full blown trial is necessary in order to assess the true intention of the parties and to determine whether respondent's acceptance indeed modified the obligation under Article 7.3.

If only to emphasize our point, we recall our decision in *Capitol Medical Center, Inc. v. CA*[26] on the purpose of an injunctive writ:

The sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard. The status quo is the last actual peaceable uncontested status which preceded the controversy. It may only be resorted to by a litigant for the preservation or protection of his rights or interests and for no other purpose during the pendency of the principal action. It should only be granted if the party asking for it is clearly entitled thereto. (emphasis supplied)[27]

In that case, the Court enunciated a clear-cut policy on when a mandatory injunctive writ may issue:

Inasmuch as a mandatory injunction tends to do more than to maintain the status quo, it is generally improper to issue such an injunction prior to the final hearing. It may however, issue "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 a mandatory injunction is rather to reestablish and maintain an preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation. Indeed, the writ should not be denied the complainant when he makes out a clear case, free from doubt and dispute." [28]

To grant the injunction sought by respondent will not preserve the status quo as it will give respondent the right to collect from petitioner more than what it has been collecting, without the benefit of trial. Without a clear showing of extreme urgency to prevent irreparable injury and of a clear and unmistakable right to it, free from doubt and dispute, the injunction sought cannot be justified.

Respondent's allegation of extreme urgency is not supported by concrete proof of irreparable injury. Nothing is offered except sweeping conclusions about the alleged possibility of financial ruin. Moreover, respondent makes much of the "threat" of petitioner to transfer its operations to Terminal 3 and thus consume less energy to respondent's detriment, an argument that is speculative at best as petitioner has not transferred its operations nor can it possibly do so. Terminal 3 is still subject of a protracted litigation and will not conceivably open anytime soon. Thus, respondent's claim of urgency cannot be believed.

WHEREFORE, the petition is hereby GRANTED. The decision dated October 16, 2003 of the Court of Appeals and its resolution dated June 25, 2004 are REVERSED and SET ASIDE. The order dated January 21, 2003, the

writ of preliminary mandatory injunction dated January 23, 2003 and the order dated March 24, 2003 of the Regional Trial Court of Pasig City, Branch 168 are ANNULLED and likewise SET ASIDE. This case is remanded to the trial court for further proceedings.

SO ORDERED.

Sandoval-Gutierrez, Azcuna, and Leonardo-De Castro, JJ., concur.
Puno, C.J., (Chairperson), No part. Due to relationship to counsel.

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

[2] Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Eloy R. Bello (retired) and Arturo D. Brion (now Secretary of Labor) of the Sixteenth Division of the Court of Appeals. Rollo, pp. 71-83.

[3] Id., p. 84.

[4] Penned by Judge Leticia Querubin Ulibarri of the Regional Trial Court of Pasig City, Branch 168. Id., pp. 57-61.

[5] Id., pp. 63-64.

[6] Id., pp. 66-69.

[7] Id., pp. 85-89.

[8] Id., pp. 168-169.

[9] Id., pp. 90-125.

[10] Id., pp. 126-127.

[11] Complaint, id., pp. 128-139.

[12] Amended Complaint, id., pp. 218-230.

[13] Urgent Motion, id., pp. 305-312.

[14] Id., pp. 57-61.

[15] Id., pp. 63-64.

[16] Id., pp. 66-69.

[17] Under Rule 65 of the Rules of Court. Docketed as CA-G.R. SP No. 76415. Id., pp. 71-82.

[18] Id., p. 84.

[19] Adjunct to this petition, petitioner prayed for issuance of a preliminary mandatory and prohibitory injunction and/or temporary restraining order pending the consideration of the merits of the petition. Since this prayer has not been acted upon when the reply was submitted, it is deemed denied.

[20] Amended Complaint, rollo, p. 229.

[21] Sy v. CA, 372 Phil. 207 (1999).

[22] Yujuico v. Quiambao, G.R. No. 168639, 29 January 2007, 518 SCRA 243.

[23] PAL, Inc. v. NLRC, 351 Phil. 172, 181 (1998).

[24] G.R. No. 79128, 16 June 1988, 162 SCRA 165.

[25] Id., p. 169.

[26] G.R. No. 82499, 16 June 1989, 178 SCRA 493.

[27] Id., p. 503 (citations omitted).

[28] Id., p. 504 (citations omitted).

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