

GEORGE S. H. SY, DOING BUSINESS UNDER THE NAME AND STYLE OF OPM INTERNATIONAL CORPORATION, PETITIONER, VS. AUTOBUS TRANSPORT SYSTEMS, INC., RESPONDENT.

G.R. No. 176898. December 03, 2012

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

A writ of preliminary mandatory injunction will not be set aside unless it was issued with grave abuse of discretion.

This Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assails the Decision[2] dated September 21, 2006 and the Resolution[3] dated March 6, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 90926.

Factual Antecedents

Petitioner George S. H. Sy is doing business under the name and style of OPM International Corporation (OPM), which is engaged in the sale and installation of bus air conditioning units.[4]

Sometime in July 1996, petitioner entered into a verbal agreement with respondent Autobus Transport Systems, Inc.,[5] a public utility bus company plying the northern Luzon routes from Manila.[6] Under their agreement, respondent would purchase Konvecta air conditioning units from petitioner and petitioner would finance respondent's acquisition of twenty-two (22) units of bus engine and chassis from Commercial Motors Corporation (CMC) and twenty-two (22) bus deluxe bodies to be built by Almazora Motors Corporation (AMC).[7] The parties agreed that respondent would amortize the payments for the Konvecta air conditioning units and the bus units separately;[8] that petitioner would settle respondent's account with CMC starting on the fourteenth (14th) month from the time of the first delivery of the bus engines and chassis; and that respondent would pay petitioner the acquisition cost of the 22 units of bus engines and chassis in 36 monthly installments, starting on the fifteenth (15th) month from the time of the first delivery of the bus engines and chassis.[9] As security, respondent would execute Chattel Mortgages over the buses in favor of CMC.[10] Once petitioner has fully paid the amortizations to CMC, respondent would execute new Chattel Mortgages over the buses, this time, in favor of petitioner.[11] In the meantime, respondent would deliver to petitioner titles to five properties in Caloocan City registered under the name of Gregorio Araneta III, the chairman of respondent, as security for petitioner's advances to CMC.[12]

The 22 bus units were delivered to respondent by CMC in three batches: 10 in November 1996, five in March 1997 and seven in October 1997.[13] After the delivery of the first batch, respondent delivered to petitioner Transfer Certificates of Title (TCT) Nos. 292199, 292200, 292201, 292202, and 292203.[14]

Petitioner, however, defaulted in paying the amortizations to CMC, forcing the latter to demand payment from respondent.[15] Consequently, respondent was compelled to pay some of the obligations directly to CMC.[16]

On November 26, 1998, respondent, through counsel, issued a letter to petitioner demanding that he settle the obligations with CMC or return the five titles to respondent.[17]

On December 5, 1998, petitioner, in a letter, apologized for the delay and requested for an extension until January 31, 1999 to settle respondent's obligations with CMC.[18]

On January 28, 1999, respondent, through counsel, again sent a letter to petitioner reminding him of his promise to settle the obligations by January 31, 1999.[19]

On the same date, petitioner, thru a letter, asked respondent for another extension of 10 days or until February 10, 1999.[20]

On March 12, 1999, due to the failure of petitioner to settle the obligations with CMC, respondent filed a complaint for Specific Performance[21] against petitioner.[22] The case was docketed as Civil Case No. 99-93127 and raffled to Branch 45 of the Regional Trial Court (RTC) of Manila. Respondent prayed that a decision be rendered:

- Ordering [petitioner] to perform all his obligations under the verbal agreement by way of paying the balance of [respondent's] loan to CMC;
- Ordering [petitioner] to return to [respondent] the mortgaged five (5) Transfer Certificates of Title Nos. 292199, 292200, 292201, 292202 and 292203;
- Ordering [petitioner] to pay [respondent] attorney's fees amounting to P50,000.00 plus P2,000.00 per hearing attended and pleadings submitted in Court.[23]

In his Answer,[24] petitioner interposed the defense of lack of cause of action, contending that respondent has no right to institute the present action because the controversy is between petitioner and CMC.[25] Petitioner also alleged that he failed to settle respondent's obligations with CMC because respondent stopped paying its amortizations.[26] Thus, petitioner prayed that respondent be ordered to pay the amount of P56,000,000.00, representing respondent's alleged unpaid balance for the entire transaction.[27]

On the scheduled pre-trial, petitioner and his counsel failed to appear, prompting the RTC to declare petitioner in default.[28] Upon petitioner's motion,[29] the RTC reconsidered the order of default.[30]

On the next scheduled pre-trial, petitioner and his counsel again failed to appear.[31] Thus, petitioner was declared in default and respondent was allowed to present its evidence ex-parte.[32]

On May 16, 2000, the RTC rendered a Decision[33] in favor of respondent, to wit:

WHEREFORE, and as prayed for by [respondent], judgment is hereby rendered for the [respondent], as follows:

- 1) ordering the [petitioner] to perform all his obligations under the verbal agreement by way of paying the balance of [respondent's] loan to CMC;
- 2) ordering [petitioner] to return to [respondent] the five (5) Transfer Certificates of Title Nos. 292199, 292200, 292201, 292202, and 29203;
- 3) ordering [petitioner] to pay [respondent] reasonable attorney's fees in the reduced amount of P20,000.00, plus the costs of suit.

The counterclaim of the [petitioner] is dismissed for lack of bases and merit.

SO ORDERED.[34]

Feeling aggrieved, petitioner filed a Petition for Relief from Judgment[35] citing the death of his counsel as excusable negligence.[36] Finding the petition meritorious, the RTC set aside its Decision and set the case for trial.[37]

On September 16, 2004, respondent filed a Motion to Order [Petitioner] to Return the Five (5) Transfer Certificates of Title to [Respondent].[38] The RTC denied the motion in an Order[39] dated December 9, 2004.

On January 11, 2005, respondent filed a Motion for the Issuance of a Writ of Preliminary Mandatory Injunction,[40] praying for the issuance of a Writ of Preliminary Mandatory Injunction commanding petitioner to return to respondent the five titles.[41]

Ruling of the Regional Trial Court

On April 11, 2005, the RTC issued an Order[42] granting respondent's Motion. The RTC ordered petitioner to return the five titles to respondent since he failed to comply with the agreement he made with respondent, i.e. to finance respondent's obligations with CMC.[43] In granting the Motion, the RTC took into consideration respondent's fear that petitioner might use these titles to obtain a loan from Metrobank given that petitioner already admitted that he turned over the possession of the five titles to the said bank.[44] Thus:

Wherefore, premises considered, and upon the posting by [respondent] of a bond in the amount of TWO MILLION (P2,000,000.00) PESOS to be approved by this Court, to answer all the damages and costs which the [petitioner] may suffer by reason of the injunction, if the Court will finally decide that the [respondent] was not entitled thereto, let a writ of preliminary mandatory injunction be issued commanding the [petitioner] to return to the [respondent] the five (5) Transfer Certificates of Title Nos. 292199, 292200, 292201, 292202 and 292203.

SO ORDERED.[45]

Petitioner filed a Motion for Reconsideration with Motion to Post Counter bond[46] but the RTC denied the same in its Order [47] dated July 26, 2005.

This prompted petitioner to elevate the case to the CA via a Petition for Certiorari,[48] imputing grave abuse of discretion on the part of the RTC in issuing the Writ of Preliminary Mandatory Injunction.

Ruling of the Court of Appeals

The CA, however, found no grave abuse of discretion on the part of the RTC.[49] The CA agreed with the RTC that respondent delivered the five titles to petitioner as security for petitioner's advances to CMC.[50] Hence, the dispositive portion of the Decision[51] dated September 21, 2006 reads:

WHEREFORE, the petition is DENIED, the two (2) assailed Orders of the Regional Trial Court, Branch 45, dated 11 April 2005 and 26 July 2005, are hereby AFFIRMED.

SO ORDERED.[52]

Petitioner moved for reconsideration[53] but the CA denied his motion in a Resolution[54] dated March 6, 2007.

Issues

Hence, this petition raising the following issues:

I.

WHETHER XXX THE HONORABLE [CA] COMMITTED A GRAVE AND SERIOUS ERROR WHEN IT FOUND THE ISSUANCE OF THE WRIT OF PRELIMINARY MANDATORY INJUNCTION TO BE IN ORDER, AND, CONSEQUENTLY, DECLARING THAT OPM NO LONGER HAD ANY REASON TO HOLD ON TO THE FIVE (5) TITLES.

II.

WHETHER XXX THE HONORABLE [CA] COMMITTED A GRAVE AND SERIOUS ERROR WHEN IT DID NOT FIND JUSTIFIABLE GROUNDS TO WARRANT THE WRIT'S DISSOLUTION BY OPM'S OFFER TO POST A COUNTER BOND UNDER SECTION 6, RULE 58 OF THE 1997 RULES OF COURT.

III.

WHETHER THE FINDINGS OF FACT OF THE [CA] COMMITTED WITH GRAVE ABUSE OF DISCRETION MAY BE REVIEWED BY THE SUPREME COURT ON APPEAL BY CERTIORARI.[55]

Summed up, the issues boil down to whether the RTC committed grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing a writ of preliminary mandatory injunction commanding petitioner to return to respondent TCT Nos. 292199, 292200, 292201, 292202, and 292203, and in denying petitioner's offer to post a counter bond.

Petitioner's Arguments

Petitioner claims that respondent is not entitled to a writ of preliminary mandatory injunction because it failed to show that it has a clear legal right[56] and that it would suffer grave and irreparable damage if a writ were not issued.[57] Petitioner alleges that respondent delivered the titles to him as security for respondent's entire obligation to OPM in the total amount of more than P81 million, inclusive of interest.[58] He insists that respondent still owes OPM the amount of P30 million, inclusive of interest.[59] Considering that respondent's obligation to OPM is not yet fully paid, respondent is not entitled to a writ of preliminary mandatory injunction.[60] Petitioner likewise claims that the P2 million bond posted by respondent is insufficient to protect the interest of OPM in the event that judgment is rendered in its favor.[61] Lastly, petitioner imputes grave abuse of discretion on the part of the CA in not allowing OPM to post a counter bond.[62]

Respondent's Arguments

Respondent, on the other hand, maintains that the RTC validly issued the writ of preliminary mandatory injunction.[63] Respondent insists that it has a legal right to recover the five titles since petitioner defaulted in his obligation, exposing respondent to damages and financial burden.[64] It claims that it had to pay interest and penalty charges to CMC because of petitioner's delay in paying the amortizations.[65] Respondent also contends that it was able to show the possibility of an "irreparable injury." [66] Since the titles are in the possession of Metrobank, there is a possibility that petitioner would use these titles to obtain a loan with Metrobank.[67] As to the bond and counter bond, respondent emphasizes that the fixing of the amount of bond and the granting of a motion for filing a counter bond are discretionary upon the trial court.[68]

Our Ruling

Section 3, Rule 58 of the Rules of Court reads:

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, either for a limited period or perpetually;

- (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.

A preliminary injunction may be issued at any time before judgment or final order.[69] It may be a prohibitory injunction, which requires a party to refrain from doing a particular act, or a mandatory injunction, which commands a party to perform a positive act to correct a wrong in the past.[70] A writ of preliminary mandatory injunction, however, is more cautiously regarded because it commands the performance of an act.[71] Accordingly, it must be issued only upon a clear showing that the following requisites are established: (1) the applicant has a clear and unmistakable right that must be protected; (2) there is a material and substantial invasion of such right; and (3) there is an urgent need for the writ to prevent irreparable injury to the applicant.[72]

In this case, the RTC, in granting respondent's Motion for the Issuance of a Writ of Preliminary Mandatory Injunction, explained that:

From the verified complaint filed in this case as well as the [respondent's] verified Motion for the Issuance of a Writ of Preliminary Mandatory Injunction, it is clear that the five (5) land titles registered in the name of Gregorio Araneta III were delivered by the [respondent] to the [petitioner] to secure the latter's advances to CMC for the financing of the twenty two (22) bus chassis which [respondent] purchased from CMC. However, [petitioner] defaulted in his obligations to CMC which compelled the [respondent] to directly pay CMC some of the obligations of the [petitioner]. Since the condition for the delivery of the land titles which is the payment by the [petitioner] of the obligations of the [respondent] to CMC has not been complied with by the [petitioner], there is no further justification for the [petitioner] to hold on to the possession of the land titles.

In this connection, extant in the records of this case are the two (2) letters of the [petitioner] to the lawyers of the [respondent] wherein he expressly admitted his failure to comply with his obligations to CMC on behalf of the [respondent] x x x. These letters were not denied by the [petitioner]; in fact, it was admitted by him in his Answer x x x.

It must be noted that the land titles are in the name of Gregorio Araneta III who is not a party to the transaction between the [respondent] and the [petitioner] and that there is no document between the parties concerning the terms and conditions behind the possession of the said titles by the [petitioner]. There is no Deed of Mortgage over the properties covered by the said titles. The only document on record is the acknowledgement receipt dated March 18, 1997 signed by the [petitioner] x x x but other than the acknowledgment of the receipt of the titles, there is nothing else to show the terms and conditions under which [petitioner] is to possess the same. At best, therefore, the [petitioner] is merely a depository of the said titles. He cannot foreclose, dispose of, assign or otherwise deal with the same. Thus, the damages that he may suffer if the land titles are returned to the [respondent] is practically inexistent compared to the damages which [respondent] and the owners of the land titles have suffered due to the continuous possession of the [petitioner] of the said titles, as they cannot exercise their proprietary rights to the properties covered by the titles.[73] (Emphasis supplied)

The CA affirmed the Order[74] since it found no grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the RTC. It said:

x x x we find the issuance of the writ to be in order. FIRST, there is no denying that the titles to the subject five (5) properties belonged to and were in fact registered under the name of Mr. Gregorio Ma. Araneta III of AUTOBUS. NEXT, as stated in AUTOBUS' complaint and admitted in OPM's answer, the purpose in handing over the five (5) titles to OPM was to secure the advances to be made by the latter to CMC. Hence, when OPM failed to meet its obligations with CMC, AUTOBUS' rights over the twenty-two (22) buses were

materially and substantially compromised by a threatened foreclosure of the chattel mortgage. Again, this cannot be denied for a chattel mortgage was executed by AUTOBUS over the buses in favor of CMC which shall be transferred to OPM once CMC is paid by OPM, although claimed by OPM as additional collateral. AUTOBUS in its Comment and Memorandum asserts that it has paid all its obligations to CMC which is not denied by OPM. Consequently, OPM no longer had any reason to hold on to the five (5) titles for its failure to pay CMC. THIRDLY, the urgency of the situation necessitating the issuance of the mandatory writ was sufficiently established by AUTOBUS before the trial court, thus:

[Respondent] has expressed fear that the [petitioner] (OPM) has turned over the possession of the said titles to Metrobank in order to obtain a loan from the bank or to secure an existing loan from the said bank. [Petitioner] has admitted that Metrobank has possession of the titles, but according to him, it is only for safekeeping. Considering this admission, this Court gives credence to the [respondent's] fear.

We x x x agree with the trial court for it is very unlikely that the purpose for handing over the titles to the bank was merely for safekeeping when the bank itself conducted inspections and appraisals on the subject five (5) properties of Mr. Araneta.

As regards OPM's offer to post a counter bond, the same on its own does not however warrant the [writ's] dissolution.[75]

Based on the foregoing disquisition, we find that the RTC had sufficient bases to issue the writ of preliminary mandatory injunction as all the requisites for the issuance of such writ were established. We agree with the RTC that respondent has a right to recover the five titles because petitioner failed to comply with his obligation to respondent. It bears stressing that respondent was compelled to directly pay CMC to avoid the foreclosure of the chattel mortgages, which respondent executed in favor of CMC. Considering that respondent has paid most, if not all, of its obligations to CMC, there is no reason for petitioner to hold on to the titles.

Petitioner's allegation that respondent delivered the five titles to him as security, not only for the refinancing of the 22 bus chassis from CMC, but for the entire obligation deserves scant consideration.

In respondent's demand letter[76] dated November 26, 1998, respondent's counsel reminded petitioner that "the sole purpose of the mortgage on the properties was to secure the refinancing of [respondent's] buses with CMC." [77] Thus, respondent's counsel demanded petitioner to settle his obligations with CMC or return the titles to respondent. In his letter-reply[78] dated December 5, 1998, petitioner did not deny that respondent delivered the titles to him solely as security for the refinancing of the buses. Instead, he admitted his failure to settle his obligations with CMC and asked that he be given additional time to settle the same.[79] In respondent's demand letter[80] dated January 28, 1999, respondent's counsel again reminded petitioner to settle the obligations with CMC or return the titles, which serves "as security for [petitioner's] refinancing of buses." [81] Again, in his letter[82] dated January 28, 1999, petitioner did not refute the statement of respondent's counsel. Once more, he admitted his failure and asked for a final extension.[83] The communication between the parties clearly proves that the respondent delivered the five titles to petitioner solely as security for the refinancing of the buses purchased by respondent from CMC.

In addition, we need not belabor that the issuance of a writ of preliminary injunction is discretionary upon the trial court because "the assessment and evaluation of evidence towards that end involve findings of facts left to the said court for its conclusive determination." [84] For this reason, the grant or the denial of a writ of preliminary injunction shall not be disturbed unless it was issued with grave abuse of discretion amounting to lack or in excess of jurisdiction.[85] Grave abuse of discretion is defined as "capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform

the duty enjoined, or to act at all in contemplation of law.”[86] No grave abuse of discretion exists in this case.

The contentions of petitioner regarding the fixing of the bond and the denial of his offer to post a counter bond likewise have no merit. As we have said, all these depend on the sound discretion of the trial court, which shall not be disturbed in the absence of grave abuse of discretion on the part of the trial court.

Finally, as to whether respondent still owes OPM the amount of P30 million, we believe that this is a factual issue best left to the determination of the RTC where the main case is pending.

WHEREFORE, the petition is hereby DENIED. The assailed Decision dated September 21, 2006 and the Resolution dated March 6, 2007 of the Court of Appeals in CA-G.R. SP No. 90926 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Peralta,[*] and Perez, JJ., concur.

[*] Per raffle dated November 26, 2012.

[1] Rollo, pp. 9-46.

[2] Id. at 48-56; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Renato C. Dacudao and Estela M. Perlas-Bernabe (now a member of this Court).

[3] Id. at 58.

[4] Id. at 13.

[5] Id. at 60.

[6] Id. at 13.

[7] Id. at 49.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id. at 50 and 60.

[13] Id. at 49.

[14] Id. at 50.

[15] Id.

[16] Id.

[17] Id. at 64-65.

[18] Id. at 66.

[19] Id. at 67.

- [20] Id. at 68.
- [21] Id. at 59-63.
- [22] Id. at 51.
- [23] Id. at 61.
- [24] Id. at 69-74.
- [25] Id. at 72.
- [26] Id.
- [27] Id. at 73.
- [28] Records, p. 52.
- [29] Id. at 58-59.
- [30] Id. at 77.
- [31] Id. at 93.
- [32] Id.
- [33] Id. at 167-169; penned by Judge Marcelino L. Sayo, Jr.
- [34] Id. at 169.
- [35] Id. at 187-200.
- [36] Id. at 190-191.
- [37] Id. at 258.
- [38] Rollo, pp. 78-81.
- [39] Id. at 96-97.
- [40] Id. at 98-103.
- [41] Id. at 101.
- [42] Id. at 117-120.
- [43] Id. at 118.
- [44] Id. at 119.
- [45] Id. at 120.
- [46] Id. at 121-130.
- [47] Id. at 149.
- [48] Id. at 150-180.
- [49] Id. at 55.
- [50] Id. at 53-54.

[51] Id. at 48-56.

[52] Id. at 55.

[53] Id. at 294-305.

[54] Id. at 58.

[55] Id. at 363.

[56] Id. at 372-376.

[57] Id. at 369-371.

[58] Id. at 365-367.

[59] Id. at 367-369.

[60] Id. at 369.

[61] Id. at 376-377.

[62] Id. at 378-381.

[63] Id. at 390.

[64] Id. at 390-393.

[65] Id. at 392.

[66] Id. at 393.

[67] Id. at 393-394.

[68] Id. at 394-395.

[69] *City Government of Butuan v. Consolidated Broadcasting System, (CBS), Inc.*, G.R. No. 157315, December 1, 2010, 636 SCRA 320, 336.

[70] Id.

[71] *Dela Rosa v. Heirs of Juan Valdez*, G.R. No. 159101, July 27, 2011, 654 SCRA 467, 479.

[72] *Pacsports Phils., Inc. v. Niccolo Sports, Inc.*, 421 Phil. 1019, 1030-1031 (2001).

[73] Rollo, pp. 118-119.

[74] Id. at 117-120.

[75] Id. at 53-55.

[76] Id. at 64-65.

[77] Id. at 65.

[78] Id. at 66.

[79] Id.

[80] Id. at 67.

[81] Id.

[82] Id. at 68.

[83] Id.

[84] Dela Rosa v. Heirs of Juan Valdez, *supra* note 71 at 480.

[85] Yap v. International Exchange Bank, G.R. No. 175145, March 28, 2008, 550 SCRA 395, 411.

[86] Dela Rosa v. Heirs of Juan Valdez, *supra* note 71 at 480.

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