

**SECOND DIVISION AUSTRALIAN PROFESSIONAL REALTY, INC.,
JESUS GARCIA, AND LYDIA MARCIANO, PETITIONERS, VS.
MUNICIPALITY OF PADRE GARCIA BATANGAS PROVINCE,
RESPONDENT.**

G.R. No. 183367. March 14, 2012

Ponente: SERENO, J.

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SERENO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to annul the Court of Appeals (CA) Resolutions in CA-G.R. SP No. 102540 dated 26 March 2008[1] and 16 June 2008, which denied petitioners' Motion for the issuance of a status quo order and Motion for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction.

Statement of the Facts and the Case

In 1993, fire razed to the ground the old public market of respondent Municipality of Padre Garcia, Batangas. The municipal government, through its then Municipal Mayor Eugenio Gutierrez, invited petitioner Australian Professional Realty, Inc. (APRI) to rebuild the public market and construct a shopping center.

On 19 January 1995, a Memorandum of Agreement (MOA)[2] was executed between petitioner APRI and respondent, represented by Mayor Gutierrez and the members of the Sangguniang Bayan. Under the MOA, APRI undertook to construct a shopping complex in the 5,000-square-meter area. In return, APRI acquired the exclusive right to operate, manage, and lease stall spaces for a period of 25 years.

In May 1995, Victor Reyes was elected as municipal mayor of respondent. On 6 February 2003, respondent, through Mayor Reyes, initiated a Complaint for Declaration of Nullity of Memorandum of Agreement with Damages before the Regional Trial Court (RTC) of Rosario, Batangas, Fourth Judicial Region, Branch 87. The Complaint was docketed as Civil Case No. 03-004.

On 12 February 2003, the RTC issued summons to petitioners, requiring them to file their Answer to the Complaint. However, the summons was returned unserved, as petitioners were no longer holding office in the given address.

On 2 April 2003, a Motion for Leave of Court to Effect Service by Publication was filed by respondent before the RTC and subsequently granted by the trial court.

On 24 November 2003, the RTC issued an Order declaring petitioners in default and allowing respondent to present evidence ex parte.

On 6 October 2004, a Decision was rendered by the RTC, which, after narrating the testimonial evidence for respondent, stated:

After the completion of the testimony of Victor M. Reyes, counsel for the petitioner manifested that he will file

the formal offer of evidence in writing.

On July 19, 2004, counsel for the petitioner filed before this Court his Formal Offer of Documentary Exhibits consisting of Exhibits “A” to “H”, inclusive of submarkings.

On August 18, 2004 an order was issued by the Court admitting all the exhibits formally offered by the petitioner thru counsel and this case was ordered submitted for resolution of the Court.

There is no opposition in the instant petition.

WHEREFORE, in view thereof, and finding the petition to be sufficient in form and substance, it being supported by sufficient evidence, judgement (sic) is hereby rendered in favor of the plaintiff as against the respondents as follows:

(a) The Memorandum of Agreement is hereby declared null and void for being contrary to law and public policy, particularly R.A. 6957 and R.A. 7718;

(b) The respondents are hereby ordered to pay the amount of FIVE MILLION PESOS (P5,000,000.00) in favor of the plaintiff for damages caused to the latter;

(c) The structures found within the unfinished PADRE GARCIA SHOPPING CENTER are hereby declared forfeited in favor of the Municipality of Padre Garcia.

SO ORDERED.[3]

There having been no timely appeal made, respondent filed a Motion for Execution of Judgment, which was granted by the RTC. A Writ of Execution was thus issued on 15 July 2005.

After learning of the adverse judgment, petitioners filed a Petition for Relief from Judgment dated 18 July 2005. This Petition was denied by the RTC in an Order dated 15 June 2006. In another Order dated 14 February 2008, the trial court denied the Motion for Reconsideration.

Petitioners later filed before the CA a Petition for Certiorari and Prohibition dated 28 February 2008, docketed as CA-G.R. SP No. 102540. On 7 March 2008, petitioners filed before the CA a Motion for the Issuance of Status Quo Order and Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction.[4] The motion prayed for an order to restrain the RTC from “further proceeding and issuing any further Order, Resolution, Writ of Execution, and any other court processes”[5] in the case before it.

On 26 March 2008, the CA issued a Resolution denying the said motion, stating thus:

After a careful evaluation of petitioners’ Motion for Issuance of Status Quo Order and Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction, We find that the matter is not of extreme urgency and that there is no clear and irreparable injury that would be suffered by the petitioners if the prayer for the issuance of a Status Quo Order, Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction is not granted. In *Ong Ching Kian Chuan v. Court of Appeals*, it was held that, to be entitled to injunctive relief, the petitioner must show, inter alia, the existence of a clear and unmistakable right and an urgent and paramount necessity for the writ to prevent serious damage.

WHEREFORE, petitioners’ prayer for the issuance of a Status Quo Order, Temporary Restraining Order and/or Writ of Preliminary Injunction is hereby DENIED for lack of merit.[6]

On 17 June 2008, the CA denied the Motion for Reconsideration of the 26 March 2008 Resolution, stating that the mere preservation of the status quo is not sufficient to justify the issuance of an injunction.

On 8 July 2008, petitioners filed the instant Petition for Review on Certiorari dated 6 July 2008.

Petitioners claim that the amount of APRI's investment in the Padre Garcia Shopping Center is estimated at ₱30,000,000, the entirety of which the RTC declared forfeited to respondent without just compensation. At the time of the filing of the Petition, APRI had 47 existing tenants and lessees and was deriving an average monthly rental income of ₱100,000. The Decision of the RTC was allegedly arrived at without first obtaining jurisdiction over the persons of petitioners. The execution of the allegedly void judgment of the RTC during the pendency of the Petition before the CA would probably work injustice to the applicant, as the execution would result in an arbitrary declaration of nullity of the MOA without due process of law.

Petitioners further allege that respondent did not exercise reasonable diligence in inquiring into the former's address in the case before the RTC. The Process Server Return, with respect to the unserved summons, did not indicate the impossibility of a service of summons within a reasonable time, the efforts exerted to locate APRI, or any inquiry as to the whereabouts of the said petitioner.

On 6 August 2008, this Court required respondent to file its Comment. On 13 February 2009, the Comment was filed, alleging among others that despite the RTC's issuance of a Writ of Execution, respondent did not move to implement the said writ out of administrative comity and fair play. Even if the writ were implemented, petitioners failed to state in categorical terms the serious injury they would sustain.

Respondent further argues that it is now in possession of the contracts that the lessees of the Padre Garcia Shopping Center executed with APRI. Thus, there are "actions [that militate] against the preservation of the present state of things,"[7] as sought to be achieved with the issuance of a status quo order.

On 2 June 2009, petitioners filed their Reply to respondent's Comment.

On 3 March 2010, this Court issued a Resolution requiring the parties to inform the Court of the present status of CA-G.R. SP No. 102540. On 15 April 2010, respondent manifested that after the parties filed their respective Memoranda, the CA considered the case submitted for decision. On 12 May 2010, petitioners filed their Compliance, stating that the appellate court, per its Resolution dated 7 August 2008, held in abeyance the resolution of CA-G.R. SP No. 102540, pending resolution of the instant Petition.

The Court's Ruling

The Petition is denied for failure to show any grave abuse of discretion on the part of the CA.

Procedural Issue: Propriety of a Petition for Review under Rule 45

Before proceeding to the substantive issues raised, we note that petitioners resorted to an improper remedy before this Court. They filed a Petition for Review on Certiorari under Rule 45 of the Rules of Court to question the denial of their Motion for the issuance of an injunctive relief.

Under Section 1 (c) of Rule 41 of the Rules of Court, no appeal may be taken from an interlocutory order. An interlocutory order is one that does not dispose of the case completely but leaves something to be decided upon.[8] An order granting or denying an application for preliminary injunction is interlocutory in nature and, hence, not appealable.[9] Instead, the proper remedy is to file a Petition for Certiorari and/or Prohibition under Rule 65.[10]

While the Court may dismiss a petition outright for being an improper remedy, it may in certain instances proceed to review the substance of the petition.[11] Thus, this Court will treat this Petition as if it were filed under Rule 65.

Substantive Issue: Grave abuse of discretion on the part of the CA

The issue that must be resolved by this Court is whether the CA committed grave abuse of discretion in denying petitioners' Motion for the Issuance of Status Quo Order and Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction (Motion for Injunction).

A writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive rights and interests.[12] An application for the issuance of a writ of preliminary injunction and/or TRO may be granted upon the filing of a verified application showing facts entitling the applicant to the relief demanded.

Essential to granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. A TRO issues only if the matter is of such extreme urgency that grave injustice and irreparable injury would arise unless it is issued immediately.[13] Under Section 5, Rule 58 of the Rule of Court,[14] a TRO may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would be inflicted on the applicant before the writ of preliminary injunction could be heard.

Thus, to be entitled to the injunctive writ, petitioners must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[15]

The grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of fact left to the said court for its conclusive determination.[16] Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.[17]

Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power 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.[18] The burden is thus on petitioner to show in his application that there is meritorious ground for the issuance of a TRO in his favor.[19]

In this case, no grave abuse of discretion can be imputed to the CA. It did not exercise judgment in a capricious and whimsical manner or exercise power in an arbitrary or despotic manner.

No clear legal right

A clear legal right means one clearly founded in or granted by law or is enforceable as a matter of law.[20] In the absence of a clear legal right, the issuance of the writ constitutes grave abuse of discretion.[21] The possibility of irreparable damage without proof of an actual existing right is not a ground for injunction.[22]

A perusal of the Motion for Injunction and its accompanying Affidavit filed before the CA shows that petitioners rely on their alleged right to the full and faithful execution of the MOA. However, while the enforcement of the Writ of Execution, which would nullify the implementation of the MOA, is manifestly prejudicial to petitioners' interests, they have failed to establish in their Petition that they possess a clear legal right that merits the issuance of a writ of preliminary injunction. Their rights under the MOA have already been declared inferior or inexistent in relation to respondent in the RTC case, under a judgment that has become final and executory.[23] At the very least, their rights under the MOA are precisely disputed by respondent. Hence, there can be no "clear and unmistakable" right in favor of petitioners to warrant the issuance of a writ of injunction. Where the complainant's right or title is doubtful or disputed, injunction is not proper.[24]

The general rule is that after a judgment has gained finality, it becomes the ministerial duty of the court to order its execution. No court should interfere, by injunction or otherwise, to restrain such execution.[25] The rule, however, admits of exceptions, such as the following: (1) when facts and circumstances later transpire that would render execution inequitable or unjust; or (2) when there is a change in the situation of the parties that may warrant an injunctive relief.[26] In this case, after the finality of the RTC Decision, there were no supervening events or changes in the situation of the parties that would entail the injunction of the Writ of Execution.

No irreparable injury

Damages are irreparable where there is no standard by which their amount can be measured with reasonable accuracy.[27] In this case, petitioners have alleged that the loss of the public market entails costs of about ₱30,000,000 in investments, ₱100,000 monthly revenue in rentals, and amounts as yet unquantified – but not unquantifiable – in terms of the alleged loss of jobs of APRI's employees and potential suits that may be filed by the leaseholders of the public market for breach of contract. Clearly, the injuries alleged by petitioners are capable of pecuniary estimation. Any loss petitioners may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages. Thus, a preliminary injunction is not warranted.[28] With respect to the allegations of loss of employment and potential suits, these are speculative at best, with no proof adduced to substantiate them.

The foregoing considered, the CA did not commit grave abuse of discretion in denying the Motion for Injunction. In any case, petitioners may still seek recourse in their pending Petition before the Court of Appeals.

WHEREFORE, the Petition is DENIED. The Court of Appeals Resolutions dated 26 March 2008 and 16 June 2008 in CA-G.R. SP No. 102540 are AFFIRMED. The Court of Appeals is directed to proceed with dispatch to dispose of the case before it.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Reyes, JJ., concur.

[1] Penned by Associate Justice Sesonando E. Villon and concurred in by Associate Justices Remedios A. Salazar-Fernando and Rosalinda Asuncion-Vicente.

[2] Rollo, pp. 61-65.

[3] Rollo, pp. 58-59.

[4] Rollo, pp. 15-24.

[5] Id. at 15.

[6] Rollo, p. 26.

[7] Id. at 144.

[8] Denso (Phils.) Inc. v. Intermediate Appellate Court, 232 Phil. 256 (1987).

[9] City of Naga v. Asuncion, G.R. No. 174042, 9 July 2008, 557 SCRA 528; Tambaoan v. Court of Appeals, 417 Phil. 683 (2001).

[10] Id.

[11] Ortega v. Social Security Commission, G.R. No. 176150, 25 June 2008, 555 SCRA 353.

[12] *Brizuela v. Dingle*, G.R. No. 175371, 30 April 2008, 553 SCRA 662, citing *Philippine National Bank v. Court of Appeals*, 353 Phil. 473, 479 (1998).

[13] *Id.*, citing *Abundo v. Manio, Jr.*, 370 Phil. 850, 869 (1999).

[14] Section 5 provides:

Sec. 5. Preliminary injunction not granted without notice; exception. — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided x x x

[15] *Medina v. City Sheriff of Manila*, 342 Phil. 90 (1997).

[16] *Barbieto v. Court of Appeals*, G.R. No. 184645, 30 October 2009, 604 SCRA 825.

[17] *Id.*

[18] *Overseas Workers Welfare Administration v. Chavez*, G.R. No. 169802, 8 June 2007, 524 SCRA 451.

[19] *Brizuela v. Dingle*, *supra* note 11.

[20] *Soriano v. People*, G.R. No. 162336, 1 February 2010, 611 SCRA 191.

[21] *Id.*

[22] *Id.*

[23] See *Medina v. City Sheriff, Manila*, *supra* note 15.

[24] *Ocampo v. Sison vda. de Fernandez*, G.R. No. 164529, 19 June 2007, 525 SCRA 79.

[25] *Bachrach Corporation v. Court of Appeals*, 357 Phil. 483 (1998).

[26] *Id.*

[27] *Social Security Commission v. Bayona*, 115 Phil. 105 (1962).

[28] *Power Sites and Signs, Inc. v. United Neon*, G.R. No. 163406, 24 November 2009, 605 SCRA 196.

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