

TEODULFO E. LAO, JR., ROGER A. ABADAY, ZALDY O. OCON, AND ENRICO D. SALCEDO, PETITIONERS, VS. LGU OF CAGAYAN DE ORO CITY, MAYOR CONSTANTINO JARAULA, VICE MAYOR VICENTE T. EMANO,...

G.R. No. 187869. September 13, 2017

Ponente: LEONEN, J.

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LEONEN, J.:

Republic Act No. 7160, otherwise known as the Local Government Code, requires prior authorization from the sangguniang panlungsod, law, or ordinance, before a city mayor may sign a contract in behalf of the city. If the city mayor has no authority from the sangguniang panlungsod to sign a contract, members of the sangguniang panlungsod have standing to file a case to have this contract declared null and void.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court questioning the March 30, 2009 Resolution[2] and May 11, 2009 Order[3] of Branch 17, Regional Trial Court, Cagayan De Oro City. This petition is filed by Barangay Captain Enrico D. Salcedo (Salcedo) of Gusa, Cagayan De Oro City and Cagayan De Oro City Councilors Teodulfo E. Lao, Jr. (Lao), Roger A. Abaday (Abaday), and Zaldy O. Ocon (Ocon) (collectively, petitioners).[4]

The Regional Trial Court denied petitioners' prayer for the issuance of a temporary restraining order. It likewise dismissed their complaint for declaration of nullity of the contract for the redevelopment of Agora Market and Terminal entered into by Cagayan De Oro City Mayor Constantino Jaraula (Mayor Jaraula) and MEGA Integrated Agro-Livestock Farm Corporation (Mega Farm) through its President Erwin Bryan See (See).[5]

On March 19, 2007, the City Council of Cagayan De Oro (City Council) passed City Ordinance No. 10557-2007,[6] which approved See's unsolicited proposal "for the redevelopment of Agora Complex into a Modern Integrated Terminal, Public Market, and Vegetable Landing Area." [7] The redevelopment would be under a build-operate-transfer scheme. At the time, the City Mayor was Vicente Y. Emano (Mayor Emano).[8]

See's unsolicited proposal was the basis of a draft Build-Operate-Transfer (BOT) Contract,[9] in which the project proponent was Mega Farm.[10] The City Council resolved not to object to the draft contract in its Resolution No. 8651-2007 dated June 25, 2007.[11] However, the City Council deferred consideration on the proposed Ordinance No. 2007-210, which authorized the mayor to enter into the contract, and referred it to the Committee on Economic Enterprises.[12]

The Cagayan De Oro City Government caused the publication of an Invitation to Qualify and to Bid for Comparative Proposal for the Agora Complex redevelopment in the Manila Standard Today on July 2, 2007, July 9, 2007, and July 16, 2007. This Invitation was signed by Mayor Emano[13] and was supposedly based on Resolution No. 8651-2007.[14]

On October 24, 2007, the city Bids and Awards Committee issued Resolution No. 41-2007, declaring that no bid

was submitted to compete with Mega Farm's proposal.[15]

On January 27, 2009, Mega Farm, through See, and the then newly elected Mayor Jaraula executed the Build-Operate-Transfer Contract for the Redevelopment of Agora Complex (Agora Complex BOT Contract).[16] The terms and conditions of this Contract were allegedly different from those in the draft contract in Resolution No. 8651-2007.

On March 19, 2009, petitioners filed their Complaint for Declaration of Nullity of the Re-Development of Agora Market and Terminal Contract Under Build-Operate-Transfer (BOT) Scheme and All Ordinances, Resolutions and Motions of the City Council Relative Thereto with Prayer for Temporary Restraining Order (TRO) & Preliminary Prohibitory Injunction with Damages with the Regional Trial Court of Misamis Oriental.[17]

This complaint was filed against City Government of Cagayan De Oro and the incumbent Cagayan De Oro City officials, in their personal and official capacities: Mayor Jaraula; Vice Mayor Vicente Y. Emano; Councilors Ramon Tabor, Reynaldo Advincula, Ian Mark Nacaya, President Elipe, Emmanuel Abejuela, Alfonso Goking, Alden Bacal, Alexander Dacer, Marycor Calizo, Aaron Neri, Adrian Barba, Ian Caesar Acenas, Simeon Licayan, Karen Vi Poquita, Dante Pajo; and Mega Farm and See.[18]

In their complaint, petitioners, as public officers and in their personal capacity, questioned the execution and the contents of the Agora Complex BOT Contract. They alleged that it was issued in bad faith and with fraudulent maneuvers between Mega Farm and the City Government of Cagayan De Oro.[19]

Petitioners further alleged that Mega Farm was unqualified to undertake the redevelopment of the Agora Complex as the construction and remodeling of structures were not the primary purposes of the corporation. They added that Mega Farm had no financial capacity to undertake the P250,000,000.00 project when it only had a paid-up capital of P625,000.00.[20] They also claimed that the provisions of the Agora Complex BOT Contract were infirm for being disadvantageous to the City Government of Cagayan De Oro.[21]

They prayed that the Agora Complex BOT Contract be declared null and void. They also prayed for moral and exemplary damages due to the other city councilors' insulting behavior toward them during the deliberations for the initial draft of the build-operate-transfer contract and the Agora Complex BOT Contract, and for attorney's fees.[22] Finally, they prayed for the issuance of a temporary restraining order, alleging that the Agora Complex BOT Contract would "result to irreparable damage to the [local government unit] of Cagayan de Oro City and its constituent tax payers." [23]

The City Government and the public officials of Cagayan De Oro (collectively, public respondents) filed an Urgent Omnibus Motion: a) To Dismiss; orb) For a Bill of Particulars.[24] In their Motion, they alleged that the complaint should be dismissed since the Regional Trial Court had not acquired jurisdiction over the complaint, as petitioners did not pay the required docket fees for the damages they had allegedly suffered.[25]

Further, they claimed that the Regional Trial Court did not have jurisdiction over the issue of the complaint. They reasoned that Republic Act No. 8975[26] does not allow the Regional Trial Court to issue temporary restraining orders against the government or any entity, acting under the government's direction to stop the following acts:

(a)

Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;

(b)

Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;

(c)

Commencement, prosecution, execution, implementation, operation of any such contract or project;

(d)

Termination or rescission of any such contract/project; and

(e)

The undertaking or authorization of any other lawful activity necessary for such contract/project.[27]

Furthermore, the issue did not fall within the exception under Section 3 of Republic Act No. 8975, as it did not involve a matter of extreme urgency involving a constitutional issue.[28]

Public respondents also claimed that petitioners have no cause of action. They argued that while they were impleaded as the incumbent members of the City Council in their personal and official capacities, the ultimate facts, as alleged by petitioners, show that at the time the Ordinances were enacted in 2007, respondent city councilors had not yet been elected.[29]

On their alternative prayer for a bill of particulars, public respondents requested for petitioners to specify the irreparable damage that would happen to the City Government of Cagayan De Oro City and its taxpayers, and to quantify and define in monetary terms their ambiguous claim for moral and exemplary damages.[30]

On March 25, 2009, the hearing on the prayer for temporary restraining order commenced. A continuation of the hearing was scheduled on March 30, 2009.[31]

Petitioners objected[32] to the Motion to Dismiss, claiming that it was not procedurally sound. They pointed out that the March 25, 2009 hearing, which was supposedly on the issuance of the temporary restraining order, became a hearing on the issues raised in the motion to dismiss.[33]

Petitioners alleged that Section 3 of Republic Act No. 8975 did not apply to the Agora Complex BOT Contract as it was not a national government contract but a local government contract. Further, even if it was not a local government contract, it is within the exception contemplated in the law, as it involved constitutional violations.[34] Moreover, it was an urgent issue considering that the Agora Complex BOT Contract had not ripened into a contract because of Mayor Jaraula's lack of authority to enter into it and because of Mega Farm's lack of financial capacity to undertake the project.[35]

On March 30, 2009, the Regional Trial Court issued a Resolution[36] denying the issuance of a temporary restraining order and dismissing the complaint.

The Regional Trial Court held that the Agora Complex BOT Contract, which was covered by Republic Act No. 6975, as amended by Republic Act No. 7718, was considered a national government project under Section 2[37] of Republic Act No. 8975. Due to this classification of the project and petitioners' failure to prove that the exceptions applied, the trial court was prohibited from issuing temporary restraining orders or preliminary injunctions over the project.[38]

It found that petitioners' basis in requesting for the issuance of a temporary restraining order-that the Agora Complex BOT Contract was entered into through gross, wanton, and fraudulent maneuvers-was not a constitutional issue. There was no showing that petitioners' rights had been violated and that there was a "possibility of irreparable damage or injury." [39] Furthermore, it held that since petitioners were not parties to the contract, they could not file the complaint, not even as taxpayers because the Agora Complex BOT Contract did not involve any appropriation of public funds.[40]

Petitioners filed their Motion for Reconsideration,[41] in which they maintained that even if Republic Act No. 8975 prohibited Regional Trial Courts from ruling on temporary restraining orders, "the power to try the main case and render judgment remains with the [Regional Trial Courts]."[42] Petitioners also insisted that the Agora Complex BOT Contract was unconstitutional and that they had locus standi because as elected city councilors, they were the voice of the people and the "watch-dog" against possible abuses. Finally, they argued that they could file the complaint as taxpayers since the Agora Complex BOT Contract involved public funds amounting to P250,000,000.00.[43]

Petitioners' Motion for Reconsideration was denied by the Regional Trial Court, which ruled that the validity of the Agora Complex BOT Contract was not a constitutional issue and that petitioners were "not parties to the contract where they may suffer actual or threatened injury." [44]

On June 3, 2009, petitioners filed their Petition for Review[45] on Certiorari under Rule 45 of the Rules of Court directly with this Court.

In their Petition for Review, petitioners claim that the Regional Trial Court erroneously dismissed their case on the ground of lack of jurisdiction.[46] They argue that what is prohibited by Republic Act No. 8975 is only the issuance of temporary restraining orders or writs of preliminary injunction by the Regional Trial Court. Thus, the Regional Trial Court still has jurisdiction over the main cause of action, namely, the declaration of nullity of the Agora Complex BOT Contract.[47]

Further, petitioners allege that the Agora Complex BOT Contract is unconstitutional as its terms are monopolistic and is in violation of Article III, Section 1 of the Constitution[48] and the principle of free enterprise. In particular, the provision in the Agora Complex BOT Contract regarding "the exclusivity of Fruits and Vegetables Landing and the Bus Terminal"[49] is contrary to the ruling of this Court in *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc.*[50]

Petitioners further aver that the Regional Trial Court failed to find that the Agora Complex BOT Contract is null and void from the beginning, considering that Mayor Emano and Mayor Jaraula had no authority to enter into this contract because the City Council had not issued any ordinance allowing them to do so.[51]

Moreover, they claim that Mega Farm lacks financial capability to undergo the project. The determination of Mega Farm's financial capability should have been determined in the pre-qualification stage, but this was not done.[52]

Finally, petitioners argue that they have legal standing to file the complaint. They claim that "the principle of lack of personality presupposes existence of a valid or voidable contract and the subject matter of the contract is private in nature." [53] Since the Agora Complex BOT Contract is null and void from the beginning, then the principle of locus standi is inapplicable. Petitioners argue that they can file the case not merely as taxpayers but as elected officers who look out for the funds of the city. Additionally, they allege that while there is no actual disbursement of P250,000,000.00 for the project, the money represents the profit that would be generated from the public once the redeveloped Agora Complex is operational.[54]

This Court issued a Resolution[55] dated June 10, 2009, requiring respondents to comment on the Petition for Review within 10 days from its notice.

On August 6, 2009, private respondents Mega Farm and See filed their Comment.[56]

They argue that it was improper for petitioners to directly file this petition with this Court, as it involves both questions of fact and law.[57] Moreover, the Verification and Certification of Non-Forum Shopping attached to

this petition is improperly subscribed.[58] They further argue that there was no error on the part of the Regional Trial Court when it denied the temporary restraining order and dismissed the entire case. Private respondents Mega Farm and See allege that in dismissing the case for the trial court's lack of jurisdiction and petitioners' lack of legal standing, the Regional Trial Court in effect dismissed the complaint based on lack of, or failure to state, a cause of action.[59]

Furthermore, the constitutionality of the law or the City Ordinance connected to the Agora Complex BOT Contract is not actually the *lis mota* of the case but the validity of the contract itself.[60] In addition, they point out that the prayer for temporary restraining order has already become moot, since ordinances have been issued, the contract has been signed, and the construction has begun.[61]

Private respondents Mega Farm and See claim that petitioners have no *locus standi*, as they are not businessmen, fruit or vegetable vendors, or jeepney operators who will be directly affected by their alleged unconstitutional part of the contract the exclusive use of the Eastbound Terminal and the exclusive disposition and drop-off of vegetables in Agora.[62]

Neither can they sue as taxpayers, as there is no appropriation of public funds. Instead, what is apparent in their complaint and in the present petition is that they are filing based on their positions as city councilors and as barangay captain of Gusa, Cagayan De Oro City. Private respondents Mega Farm and See allege that petitioners cannot sue as public officers because they failed to show that they have material interest in the project.[63]

Meanwhile, public respondents filed a Motion for Extension of Time, praying for an additional 20 days to file their comment to the Petition for Review.[64]

This Court issued a Resolution[65] dated August 26, 2009, noting Mega Farm and See's Comment and granting public respondents' motion.

On August 24, 2009, public respondents filed their Comment[66] to the petition.

Public respondents allege that Republic Act No. 8975 prohibits the Regional Trial Court from issuing temporary restraining orders unless an urgent constitutional issue is involved, which petitioners failed to show.[67] They also claim that petitioners' complaint was dismissed not exclusively on lack of jurisdiction but on the premise that they failed to show that they were the proper parties to question the Agora Complex BOT Contract.[68] Because of this, it is misleading for petitioners to claim that the dismissal of the case was based only on Republic Act No. 8975.[69]

They further argue that petitioners failed to show that the execution of the Agora Complex BOT Contract caused them direct, personal, and substantial injury. They were not parties to the contract, or fruit or vegetable vendors, or public utility operators who would be directly affected by the exclusivity of the Eastbound Terminal and of the drop-off of vegetables in Agora. Neither could they complain as taxpayers, as there was no disbursement of public funds required for the project.[70]

On September 2, 2009, petitioners filed their Reply[71] to public respondents' Comment. On September 18, 2009, they filed their Reply to private respondent's Comment.[72] Petitioners claim that their petition involves only questions of law and is, thus, cognizable by this Court.[73] They also claimed that the Verification and Certification of Non-Forum Shopping is sufficient, having been duly subscribed and sworn to before a notary public.[74] They reiterate that the Agora Complex BOT Contract is void, there being no ordinance issued by the City Council of Cagayan De Oro authorizing Mayor Jaraula to sign it. The contract being void, the principle of standing is inapplicable. Thus, they may question its validity, even if they are not parties to the contract.[75]

This Court issued a Resolution dated October 14, 2009[76] noting public respondents' Comment and petitioners' Replies to public and private respondents' Comments. This Court also expunged from the records the rejoinder filed by public respondents since it lacked a motion for leave to file rejoinder.

The issues for this Court's resolution are:

First, whether or not it was proper for Teodulfo E. Lao, Jr., Roger A. Abaday, Zaldy O. Ocon, and Enrico D. Salcedo to file a Petition for Review under Rule 45 directly with this Court;

Second, whether or not Teodulfo E. Lao, Jr., Roger A. Abaday, Zaldy O. Ocon, and Enrico D. Salcedo's Verification and Certification of Non--Forum Shopping is fatally defective as to warrant the dismissal of the Petition for Review;

Third, whether or not the Regional Trial Court correctly denied the issuance of the temporary restraining order against the Agora Complex Build-Operate-Transfer Contract; and

Finally, whether or not Teodulfo E. Lao, Jr., Roger A. Abaday, Zaldy O. Ocon, and Enrico D. Salcedo have locus standi to file a complaint to have the Agora Complex Build-Operate-Transfer Contract declared null and void.

I

Under Rule 41, Section 2 of the Rules of Court, there are three (3) modes of appeal from a judgment or final order of the Regional Trial Court:

Section 2. Modes of appeal. -

(a)

Ordinary appeal. - The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b)

Petition for review. - The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c)

Appeal by certiorari. - In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.

Direct resort to this Court by way of petition for review on certiorari is permitted when only questions of law are involved.[77]

There is a question of law when there is doubt as to which law should be applied to a particular set of facts.[78] Questions of law do not require that the truth or falsehood of facts be determined or evidence be received and examined.[79] Matters of evidence more properly pertain to the trial courts as the trier of facts and the appellate courts as the reviewer of facts.[80]

As correctly pointed out by public respondents, among the four (4) errors that petitioners assign to the Regional Trial Court, two (2) are questions of fact. The nullity of the Agora Complex BOT Contract due to the mayor's

alleged lack of authority to sign it and the local government's alleged failure to determine the project proponent's financial capacity require the reception and examination of evidence. These issues are questions of fact not cognizable in a petition for review under Rule 45.

Nonetheless, whether or not the Regional Trial Court correctly denied the issuance of the temporary restraining order and dismissed the complaint due to its lack of jurisdiction and petitioners' standing is a question of law which may be resolved by this Court.

II

As pointed out by private respondents,[81] the petition's Verification and Certification of Non-Forum Shopping is improperly notarized, there being no statement that the affiants were either personally known to the notary public or that competent evidence of their identities was presented.

Under the 2004 Rules on Notarial Practice (Notarial Rules), an individual who appears before a notary public to take an oath or affirmation of a document must, among others, be personally known to or be identified by the notary public through competent evidence of identity.[82] Rule II, Section 12 of the Notarial Rules defines "competent evidence of identity" as:

Section 12. Competent Evidence of Identity. - The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a)

at least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration government office ID, certification from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; or

(b)

the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

Here, neither the petition's Verification and Compliance with Non- Forum Shopping Law[83] nor its Affidavit of Proof of Service[84] contains any statement that their respective affiants were personally known to the notary public or have presented competent evidence of identity pursuant to Rule II, Section 12 of the 2004 Rules on Notarial Practice. The omission is also evident in the Affidavit of Proof of Service[85] attached to petitioners' Reply. In all these instances, the notary public was Atty. Manolo Z. Tagarda, Sr. (Atty. Tagarda), who also serves as counsel for petitioners.

Notaries public must observe "the highest degree of care" in ensuring compliance with the basic requirements of the Notarial Rules.[86] Notaries public who fail to indicate in notarized documents that the affiants are personally known to them or have presented competent evidence of their identities violate not only the Notarial Rules, but also Canon 1, Rule 1.01 of the Code of Professional Responsibility:

A notary public exercises duties calling for carefulness and faithfulness. Notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions. In line with this mandate, a notary public should not notarize a document unless the person who signed the same is the very person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. By failing in this regard, the notary public permits a falsehood which does not only transgress the Notarial Rules but also Rule 1.01, Canon 1 of the Code of Professional Responsibility, which provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Verily, a notarized document is, by law, entitled to full faith and credit upon its face; and it is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[87] (Citations omitted)

Atty. Tagarda should show cause why he should not be made administratively liable for failure to comply with the Notarial Rules and the Code of Professional Responsibility.

As for the petition itself, the defect of the failure to show that competent evidence of identity was presented may be overlooked in view of the merits of the case.[88]

III

The Regional Trial Court correctly denied the issuance of a temporary restraining order against the Agora Complex BOT Contract.

Contrary to the claim of petitioners, the Regional Trial Court did not dismiss the complaint on the basis of lack of jurisdiction pursuant to Republic Act No. 8975. It only denied the issuance of a temporary restraining order on this basis. It is well settled that despite the provisions of Republic Act No. 8975, trial courts still retain jurisdiction over the main cause of action to nullify or implement a national government contract.[89]

Republic Act No. 8975 expressly prohibits the issuance by all courts, other than this Court, of any temporary restraining orders, preliminary injunctions, or preliminary mandatory injunctions against national government projects:

Section 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. - No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

(a)

Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;

(b)

Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;

(c)

Commencement, prosecution, execution, implementation, operation of any such contract or project;

(d)

Termination or rescission of any such contract/project; and

(e)

The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited, to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

Among the "national government projects" covered by the prohibition in Section 3 of Republic Act No. 8975 are projects covered by Republic Act No. 6957, as amended, otherwise known as the Build-Operate-Transfer Law:

Section 2. Definition of Terms. -

(a)

"National government projects" shall refer to all current and future national government infrastructure, engineering works and service contracts, including projects undertaken by government-owned and -controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build- Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding. (Emphasis supplied)

That Build-Operate-Transfer projects of local government units are covered by Republic Act No. 8975 was affirmed in *GV Diversified International, Inc. v. Court of Appeals*.^[90] The issuance of a temporary restraining order against the opening of sealed bids for a "Build and Transfer Contract" with Cagayan De Oro City was found to be in violation of Republic Act No. 8975:

Based on [Sections 2, 3 and 4 of Republic Act No. 8975], a preliminary injunction issued by any court, other than the Supreme Court, for the purpose of restraining the bidding or awarding of a national government project, is void.

In this case, the preliminary injunction issued by the RTC sought to restrain the City of Cagayan de Oro from opening the sealed bids for the South Diversion Road and PCDG Cargo Bridge Project. The said venture, which is covered by the Build-Operate-and-Transfer Law, is clearly a national government project within the meaning of Rep. Act No. 8975. Therefore, the subject writ of preliminary injunction is, by operation of law, void and of no force and effect.

Consequently, the Court of Appeals, in lifting the preliminary injunction issued by the RTC, did not commit grave abuse of discretion. On the contrary, the Court of Appeals in fact served the purpose of Rep. Act No. 8975. The lifting of the subject preliminary injunction paved the way for the opening of the sealed bids pursuant to the City's invitation to qualified bidders. As a result, the implementation of the aforesaid infrastructure project continued without any undue and costly delay, as expressly mandated by Rep. Act No. 8975.^[91]

Here, as found by the Regional Trial Court, the Agora Complex BOT Contract falls within the prohibition in Republic Act No. 8975:

The Jaraula-See BOT Contract must be read in the light of RA 8975 and RA 7718. The subject project - the redevelopment of the Agora market was admitted by plaintiff to be a BUILD-OPERATE-TRANSFER scheme between the City Government and that of the project proponent, hence, the definition of "national government projects" under SEC. 2 of RA 8975 is not limited to current and future national government infrastructure, engineering works and service contracts including projects undertaken by government-owned or [-]controlled corporations, but ALL PROJECT COVERED by Republic Act No. 6975 as amended by Republic Act No. 7718 otherwise known as Build-Operate-Transfer Law[.][92] (Emphasis the original)

The only exception when a court other than this Court may grant injunctive relief is if it involves a matter of extreme urgency, involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.[93]

The party seeking a writ of preliminary injunction or temporary restraining order as an exception to Republic Act No. 8975 must discharge the burden of proving a clear and compelling breach of a constitutional provision:

Mere allegation or invocation that constitutionally protected rights were violated will not automatically result in the issuance of injunctive relief. The plaintiff or the petitioner should discharge the burden to show a clear and compelling breach of a constitutional provision. Violations of constitutional provisions are easily alleged, but trial courts should scrutinize diligently and deliberately the evidence showing the existence of facts that should support the conclusion that a constitutional provision is clearly and convincingly breached. In case of doubt, no injunctive relief should issue. In the proper cases, the aggrieved party may then avail itself of special civil actions and elevate the matter.[94]

While conclusive proof of the right to be protected is not necessary, there must still be a clear presentation of the existing basis of facts which shows the right being threatened:

Conclusive proof of the existence of the right to be protected is not demanded, however, for, as the Court has held in *Saulog v. Court of Appeals*, it is enough that:

. . . for the court to act, there must be an existing basis of facts affording a present right which is directly threatened by an act sought to be enjoined. And while a clear showing of the right claimed is necessary, its existence need not be conclusively established. In fact, the evidence to be submitted to justify preliminary injunction at the hearing thereon need not be conclusive or complete but need only be a "sampling" intended merely to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. This should really be so since our concern here involves only the propriety of the preliminary injunction and not the merits of the case still pending with the trial court.

Thus, to be entitled to the writ of preliminary injunction, the private respondent needs only to show that it has the ostensible right to the final relief prayed for in its complaint[.][95] (Emphasis in the original)

Here, the alleged breach of petitioners' ostensible rights was neither clear nor compelling as to warrant an exception from Republic Act No. 8975. Petitioners' claim that the Agora Complex BOT Contract would require that the Agora Complex be made an exclusive terminal for public utility vehicles in violation of the "constitutional right of citizens to free enterprise"[96] does not entitle them to a temporary restraining order. Apart from mere allegations, they have not pointed to any grave injustice or irreparable injury to constitutional rights that would be sustained if no injunctive reliefs are issued against the execution of the Agora Complex BOT Contract. The trial court correctly denied the prayer for a temporary restraining order.

IV

The dismissal by the trial court of the complaint due to petitioners' lack of personality to file suit is erroneous. Petitioners, as members of the City Council of Cagayan De Oro, may file a case to question a contract entered into by the city mayor allegedly without the City Council's authority.

Rule 3. Section 2 of the Rules of Court defines the real party in interest that may institute a case:

Section 2. Parties in interest. - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

The real party in interest which may file a case, questioning the validity of a contract entered into by the city mayor, who is alleged to have no authority to do so, is the city itself. It is the local government unit which stands to be injured or benefited by any judgment that may be made in this case. The city councilors merely represent the city in the suit. As explained in *City Council of Cebu v. Cuizon*:^[97]

It seems clearly self-evident from the foregoing recitation of the undisputed antecedents and factual background that the lower court gravely erred in issuing its dismissal order on the ground of plaintiffs' alleged lack of interest or legal standing as city councilors or as taxpayers to maintain the case at bar. The lower court founded its erroneous conclusion on the equally erroneous premise of citing and applying Article 1397 of the Civil Code that "the action for the annulment of contracts may be instituted (only) by all who are thereby obliged principally or subsidiarily."

The lower court's fundamental error was in treating plaintiffs' complaint as a personal suit on their own behalf and applying the test in such cases that plaintiffs should show personal interest as parties who would be benefited or injured by the judgment sought. Plaintiffs' suit is patently not a personal suit. Plaintiffs clearly and by the express terms of their complaint filed the suit as a representative suit on behalf and for the benefit of the city of Cebu.^[98] (Citation omitted)

City councilors may file a suit for the declaration of nullity of a contract on the basis that the city mayor had no authority to do so because the city mayor's authority to bind the city to obligations must emanate from the City Council. Under Title III, Chapter III, Article I, Section 455(b)(1)(vi) of Republic Act No. 7160, otherwise known as the Local Government Code, the city mayor may sign all bonds, contracts, and obligations on behalf of a city only upon authority of the sangguniang panlungsod or pursuant to law or ordinance:

Section 455. Chief Executive: Powers, Duties and Compensation. -

....

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the city government, and in this connection, shall:

....

(vi) Represent the city in all its business transactions and sign in its behalf all bonds, contracts, and obligations, and such other documents upon authority of the sangguniang panlungsod or pursuant to law or ordinance[.]

The requirement of the sangguniang panlungsod's prior authority is a measure of check and balance on the powers

of the city mayor:

Yet, this is obviously not the effect Congress had in mind when it required, as a condition to the local chief executive's representation of the local government unit in business transactions, the prior authorization of the sanggunian concerned. The requirement was deliberately added as a measure of check and balance, to temper the authority of the local chief executive, and in recognition of the fact that the corporate powers of the local government unit are wielded as much by its chief executive as by its council.[99]

As the City Council is the source of the mayor's power to execute contracts for the city, its members have the authority, interest, and even duty to file cases in behalf of the city, to restrain the execution of contracts entered into in violation of the Local Government Code:

Under such circumstances, in the same manner that a stockholder of a corporation is permitted to institute derivative or representative suits as nominal party plaintiff for the benefit of the corporation which is the real party in interest, more so may plaintiffs as city councilors exclusively empowered by the city charter to "make all appropriations for the expenses of the government of the city" and who were the very source of the authority granted to the city mayor to enter into the questioned transactions which authority was later revoked by them, as per the allegations of the complaint at bar, be deemed to possess the necessary authority, and interest, if not duty, to file the present suit on behalf of the City and to prevent the disbursement of city funds under contracts impugned by them to have been entered into by the city mayor without lawful authority and in violation of law.[100] (Citations omitted)

Here, it is undisputed that petitioners are members of the City Council of Cagayan De Oro. They have alleged that public respondent Mayor Jaraula entered into the Agora Complex BOT Contract without being authorized by the City Council of Cagayan De Oro, in violation of the requirement in Title III, Chapter III, Article I, Section 455(b)(1)(vi) of the Local Government Code. Clearly, as they are part of the very body in which authority is allegedly being undermined by the city mayor, they have the right and duty to question the basis of the mayor's authority to sign a contract which binds the city.

WHEREFORE, the petition is **PARTIALLY GRANTED**. On the dismissal of the Complaint for the Declaration of Nullity of the Redevelopment of Agora Market and Terminal Contract Under Build--Operate-Transfer Scheme and All Ordinances, Resolutions and Motions of the City Council Relative Thereto with Prayer for Temporary Restraining Order and Preliminary Prohibitory Injunction with Damages, the March 30, 2009 Resolution and May 11, 2009 Order of the Regional Trial Court in Civil Case No. 20090-076 are **REVERSED**. The denial of the issuance of a Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction is **AFFIRMED**. Let this case be **REMANDED** to the Regional Trial Court of origin for further proceedings.

Let a copy of this Decision be **FURNISHED** the Office of the Bar Confidant for the filing of the appropriate action against Atty. Manalo Z. Tagarda, Sr. for possible violation of the 2004 Rules of Notarial Practice and the Code of Professional Responsibility, to be re-docketed as a separate administrative action.

SO ORDERED.

Velasco, Jr., (Chairperson), Bersamin, Martires, and Gesmundo, JJ., concur.

December 1, 2017

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 13, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on December 1, 2017 at 10:20 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] While the caption of the Petition for Review states that one of the respondents is "MEGA Integrated Agro-Livestock Farm Corporation President Erwin Bryan See," the body states respondent to be "MEGA Integrated Agro-Livestock Farm Corporation represented by its president Erwin Bryan See" (Rollo, p. 8). MEGA Integrated Agro-Livestock Farm Corporation and Erwin Bryan See jointly filed their Comment to the Petition for Review (Rollo, pp. 223-263).

[1] Rollo, pp. 6-25.

[2] Id. at 209-213. The Resolution, docketed as Civil Case No. 2009-076, was penned by Presiding Judge Florencia D. Sealana-Abbu of Branch 17, Regional Trial Court, Cagayan de Oro City.

[3] Id. at 221.

[4] Id. at 7.

[5] Id. at 213.

[6] Id. at 36.

[7] Id.

[8] Id.

[9] Id. at 78-98.

[10] Id. at 79.

[11] Id. at 99.

[12] Id. at 100.

[13] Id. at 101.

[14] Id. at 29.

[15] Id. at 28-29.

[16] Id. at 102-112.

[17] Id. at 26-33.

[18] Id. at 26.

[19] Id. at 27-28.

[20] Id. at 29-30.

[21] Id. at 32.

[22] Id. at 33.

[23] Id. at 32.

[24] Id. at 158-165.

[25] Id. at 160.

[26] An Act To Ensure The Expeditious Implementation And Completion Of Government Infrastructure Projects By Prohibiting Lower Courts From Issuing Temporary Restraining Orders, Preliminary Injunctions Or Preliminary Mandatory Injunctions, Providing Penalties For Violations Thereof, And For Other Purposes (2000).

[27] Rep. Act No. 8975, sec. 3.

[28] Rollo, p, 162.

[29] Id. at 163.

[30] Id. at 164.

[31] Id. at 10-11.

[32] Id. at 166-173.

[33] Id. at 167.

[34] Id. at 168-169.

[35] Id. at 170-171.

[36] Id. at 209-213.

[37] Rep. Act No. 8975, sec. 2 provide:

Section 2. Definition of Terms. -

(a) "National government projects" shall refer to all current and future national government infrastructure, engineering works and service contracts, including projects undertaken by government owned and -controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding.

[38] Rollo, pp. 212-213.

[39] Id. at 213 citing *Heirs of Eugenia Roxas v. Intermediate Appellate Court*, 255 Phil. 558 (1989) [Per J. Cortes, Third Division].

[40] Id.

[41] Id. at 214-220.

[42] Id. at 217.

[43] Id. at 219.

[44] Id. at 221.

[45] Id. at 3-25.

[46] Id. at 13.

[47] Id. at 13-14.

[48] CONST., art. III, sec. 1 provides:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[49] Rollo, p. 14.

[50] 492 Phil. 314 (2005) [Per J. Carpio-Morales, En Banc].

[51] Rollo, pp. 15-17.

[52] Id. at 18.

[53] Id. at 19.

[54] Id. at 21.

[55] Id. at 222.

[56] Id. at 223-263.

[57] Id. at 224.

[58] Id. at 233.

[59] Id. at 41.

[60] Id. at 244.

[61] Id. at 254.

[62] Id. at 245-246.

[63] Id. at 246.

[64] Id. at 270-273.

[65] Id. at 275.

[66] Id. at 276-302.

[67] Id. at 284-285.

[68] Id. at 285.

[69] Id. at 286.

[70] Id. at 292-293.

[71] Id. at 305-309.

[72] Id. at 310-317.

[73] Id. at 305.

[74] Id. at 306.

[75] Id. at 315.

[76] Id. at 334.

[77] RULES OF COURT, Rule 45, sec. 1.

[78] *Ronquillo v. National Electrification Administration*, G.R. 172593, April 20, 2016, 790 SCRA 611, 630 [Per J. Leonen, Second Division].

[79] *Ligtas v. People*, 766 Phil. 750, 763 (2015) [Per J. Leonen, Second Division], citing *Ruiz v. People*, 512 Phil. 127, 135 (2005) [Per J. Callejo, Sr., Second Division].

[80] *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 769 (2013) [Per J. Brion, Second Division].

[81] *Rollo*, p. 233.

[82] RULES ON NOTARIAL PRACTICE, Rule II, sec. 2 and 6 state:

Section 2. Affirmation or Oath. - The term "Affirmation" or "Oath" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) avows under penalty of law to the whole truth of the contents of the instrument or document.

....

Section 6. Jurat. - "Jurat" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and presents an instrument or document;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;

(c) signs the instrument or document in the presence of the notary; and

(d) takes an oath or affirmation before the notary public as to such instrument or document.

[83] *Rollo* p. 24.

[84] Id. at 25.

[85] Id. at 309.

[86] Atty. Bartolome v. Atty. Basilio, 771 Phil. 1, 5 (2015) [Per J. Perlas-Bernabe, First Division].

[87] Id. at 9-10.

[88] See Coca Cola Bottlers Philippines, Inc. v. Dela Cruz, 622 Phil. 886 (2009) [Per J. Brion, Second Division]; Heirs of Zaulda v. Zaulda, 729 Phil. 639 (2014) [Per J. Mendoza, Third Division].

[89] See Dynamic Builders & Construction Co. (Phil.), Inc. v. Hon. Presbitero, Jr., 757 Phil. 454 (2015) [Per J. Leonen, En Banc]; Republic v. Nolasco, 496 Phil. 853 (2005) [Per J. Tinga, Second Division]; Hontiveros-Baraquel v. Toll Regulatory Board, 754 Phil. 406 (2015) [Per C.J. Sereno, First Division].

[90] 532 Phil. 296 (2006) [Per J. Quisimbing, Third Division].

[91] Id. at 304.

[92] Rollo, p. 212.

[93] Rep. Act No. 8975, sec. 3 which states in part:

Section 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. -

This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave Injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought. (Emphasis supplied)

See also Republic v. Nolasco, 496 Phil. 853 (2005) [Per J. Tinga, Second Division].

[94] Dynamic Builders & Construction Co. (Phil.), Inc. v. Hon. Presbitero, Jr., 757 Phil. 454, 473 (2015) [Per J. Leonen, En Banc].

[95] Nerwin Industries Corp. v. PNOC-Energy Development Corp., 685 Phil. 412, 426-427 (2012) [Per J. Bersamin, First Division].

[96] Rollo, p. 32.

[97] 150-C Phil. 116 (1972) [Per J. Tehankee, En Banc].

[98] Id. at 128.

[99] Quisumbing v. Garcia, 593 Phil. 655, 671 (2008) [Per J. Tinga, En Banc].

[100] City Council of Cebu v. Cuizon, 150-C Phil. 116, 132 (1972) [Per J. Teehankee, En Banc].

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