

DELBROS HOTEL CORPORATION,PETITIONERS, VS. THE INTERMEDIATE APPELLATE COURT [FIRST SPECIAL CASES DIVISION], HILTON INTERNATIONAL COMPANY, ACHIMIHLENFELD, AS SUCCESSOR TO RICHARD...

G.R. No. 72566. April 12, 1988

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FERNAN, J.:

This is a petition for certiorari with urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction to nullify and resolutions dated September 5, 11 and 24, 1985, issued by the then Intermediate Appellate Court, now Court of Appeals, in AC-G.R. No. SP-07020, entitled "Hilton Hotels International, Inc. [Hilton International Co.], et al. vs. Hon. Abelardo M. Dayrit, et al."

The antecedent facts are as follows:

On February 27, 1985, petitioner Delbros Hotel Corporation [DELBROS, for short] filed before the Regional Trial Court of Manila a complaint for termination of agreement and damages, with prayer for the issuance of a restraining order and/or writ of preliminary mandatory injunction against private respondents Hilton Hotels International [now known as Hilton International Company] and Richard Chapman, in his capacity as General Manager of Manila Hilton. In said complaint, docketed as Civil Case No. 85-29489 and raffled off to Branch XXXIX presided over by Judge Abelardo M. Dayrit, it was alleged that pursuant to the Agreement and Lease entered into by and between DELBROS and Hilton Hotels International, Inc. [HILTON] on June 2, 1964, later amended into a Management Agreement on June 9, 1966, and its Supplemental Amendments of March 23, 1973 and November 22, 1976, DELBROS financed, built, furnished and equipped a first-class hotel of approximately 400 rooms, now known as the "Manila Hilton," the operation and management of which was granted to HILTON: that for their respective undertakings, DELBROS was to receive a share in the gross operating profit [GOP] of the hotel, as defined in Article V of the basic agreements, while HILTON was entitled to a management fee equivalent to five percent [5%] of the gross revenues and an incentive fee equivalent to ten percent [10%] of the GOP of the hotel; that in violation of the terms of the agreement, HILTON a) refused, despite repeated demands, to remit to DELBROS its share in the GOP, which as of December 31, 1984 amounted to P2,591,165.00 as well as the excess of the normal working capital; b) transferred, without DELBROS' prior approval, a portion of the reserve funds to its operating funds; and, c) used said operating funds for capital expenditures without the consent of DELBROS; that in addition, HILTON grossly mismanaged the hotel and breached the trust and confidence reposed upon it by DELBROS, thereby causing DELBROS to default in its amortizations to the GSI's.[1]

In their Answer, with Compulsory counterclaim, therein defendants HILTON and Chapman specifically denied the allegations of DELBROS and set forth the following as affirmative defenses: that DELBROS had no valid and sufficient cause of action for failure to give a five-day notice of termination of the Management Agreement as required under Article XI thereof; DELBROS' cause or causes of action, if any, were barred by estoppel or laches; DELBROS' claims or demands had been waived or abandoned; and that the alleged violations of the Management Agreement were too trivial or insignificant to warrant the grave penalty of termination of the Management

Agreement after it had been in force for 17 years. By way of compulsory counterclaim, HILTON and Chapman prayed for an award of moral damages in the amount of P1,000,000.00 each and the same amount each as exemplary damages plus attorney's fees.[2]

On March 21, 1985, Judge Dayrit issued a writ of preliminary injunction, enjoining HILTON and Chapman from:

"a]

Disposing, removing, tampering, destroying, or otherwise concealing corporate records, books of accounts, statement of accounts receivables, ledgers, vouchers, invoices, receipts, purchase orders, job orders, bank statements, returned checks, gate passes, incident reports, debit/credit memos and/or any other document of similar nature, pertaining to the operation, management and administration of the business and affairs of the hotel known as the 'Manila Hilton' located at the United Nations Avenue, Ermita, Manila;

"b]

Disposing, removing, destroying, dissipating, or otherwise concealing hotel stocks [consisting of food, beverage, supplies and items of similar nature], furniture, furnishings, specialized hotel equipment [which term shall mean all equipment required for the operation of kitchen, laundries, dry cleaning facilities, restaurants, bars, special lighting and other equipment of similar nature] operating equipment [which term shall include chinaware, linens, silverware, kitchenwares and other similar items], operating and guest supplies [which term shall include soaps, cleaning materials, matches, paper supplies, stationery and other similar items] and such other furnishings equipment and other personal properties or assets as are normally required for the efficient and continuing operation of the Manila Hilton;

"c]

Disbursing, expending and/or dissipating monies, funds, time deposits, revenues, and income under the account of Hilton International Company and/or Manila Hilton, without prior approval from this Court, except only as may be necessary to prevent total or partial disruption of the hotel's services;

"d]

Disbursing funds in payment to Hilton International Company or transferring funds to Hilton's local bank accounts or offsetting hotel receivables in favor of Hilton International Company and/or its affiliated companies;

"e]

Remitting funds from their local bank accounts to their foreign offices."[3]

A clarificatory order on this writ was issued on March 28, 1985.

From these orders, HILTON and Chapman went to the Intermediate Appellate Court on a petition for certiorari docketed as AC-G.R. No. SP-06474. On July 3, 1985, the Third Special Cases Division of the IAC, to which the petition was assigned, issued a temporary restraining order enjoining the implementation of the orders of Judge Dayrit. The temporary restraining order was replaced on August 21, 1985 with a writ of preliminary injunction.[4]

Meanwhile, on April 12, 1985, DELBROS filed in Civil Case No. 85-29489 a motion to admit Supplemental Complaint. The Supplemental Complaint impleaded as an additional defendant Flaviano Mosquera, Jr., in his capacity as Comptroller of the Manila Hilton and sought the confirmation by the trial court of the termination of the Management Contract effected by DELBROS through the service upon HILTON of the five-day notice of termination provided thereunder, as well as the payment of DELBROS' share in the GOP of the hotel for the months of January and February 1985 and other damages.

Over the opposition of HILTON and Chapman, the lower court issued an Order on June 14, 1985, admitting the Supplemental Complaint, directing summons and copy of the supplemental complaint to be served on the additional defendant and requiring HILTON and Chapman to answer the supplemental complaint within five [5] days from notice. Copies of the June 14, 1985 Order were received by the parties' counsels on June 21, 1985.

On July 6, 1986, an ex-parte motion for an extension of twelve [12] days to answer the supplemental complaint was filed in behalf of all the three defendants, HILTON, Chapman and Mosquera. Said motion, sent by registered mail, was not received by the trial court until July 16, 1985.

However, earlier, or on July 9, 1985, DELBROS had filed a motion to declare defendants HILTON and Chapman in default with respect to the supplemental complaint. This was granted on even date and DELBROS allowed to present its evidence ex-parte in support of its supplemental complaint.

On July 15, 1986, the lower court rendered a judgment by default, confirming as legal and valid the termination as of March 31, 1985 of the Management Agreement between the parties and ordering, among others, the defendants to immediately quit and surrender the Manila Hilton International Hotel to DELBROS' President as well as to pay DELBROS its share in the GOP of the hotel for the months of January to March, 1985, plus legal interest thereon from the date of the filing of the Supplemental Complaint until full payment thereof.[5] Copies of the default judgment were served on the parties' counsels in the morning of July 18, 1985. In the afternoon of the same day, HILTON, et al. filed their Answer to the Supplemental Complaint, and on July 24, 1985, filed a notice of appeal from the judgment by default.

Meanwhile, on July 19, 1985, DELBROS moved for the execution of the judgment pending appeal. Although opposed by HILTON, et al., the motion was granted in a Special Order dated September 3, 1985. A writ of execution was issued and served upon defendants on the same day. The Partial Sheriffs Return reads as follows:

"That on September 3, 1985, copies of the Writ of Execution dated September 3, 1985 together with the Judgment by Default dated July 15, 1985 and the Special Order dated September 3, 1985, all issued in the above-entitled case, were served and tendered upon the following:

"1.

Defendant Hilton International, Inc. [now known as Hilton International Company] through Achim Ihlenfeld, General Manager of Manila Hilton International Hotel; and,

"2.

Defendant Flaviano Mosquera, Jr. at their given addresses, as evidenced by their signatures acknowledging receipt of the aforementioned documents, hereto attached.

"The aforesaid individuals, after carefully reading the documents served and after consulting with their counsel by telephone voluntarily vacated and surrendered their respective offices at the Manila Hilton International. Thereupon, Delbros Hotel Corporation took over possession and control over the management and operation of

the Hotel as evidenced by notices of take over of the hotel signed by the President of Delbros Hotel Corporation and addressed to all officers and employees, posted in strategic places in the hotel, a copy hereto attached.

"The Notices of Garnishment were likewise served on the following banks:

- Pilipinas Bank, Manila Hilton Branch
- PNB, Ermita Branch
- Bank of America, Paseo de Roxas Branch

as evidenced by the rubber stamp mark and signatures appearing on the duplicate original copies thereof, hereto attached.

"The undersigned posted guard in the respective offices of Messrs. Ihlenfeld and Mosquera.

"Manila, Philippines, September 3, 1985.

"For the Sheriff of Manila.
[Sgd.] Miguelito S. Navarro
Deputy Sheriff
Branch XXXIX, RTC of Manila."[6]

On the following day, September 4, 1985, HILTON, et al. instituted before the then Intermediate Appellate Court a petition for certiorari with prayer for a restraining order/preliminary injunction, docketed as AC-G.R. No. SP-07020, to assail the Special Order of September 3, 1985 for allegedly having been issued with grave abuse of discretion amounting to lack of jurisdiction.[7] As prayed for, the First Special Cases Division of the IAC, to which the petition was assigned, issued on September 5, 1985 a temporary restraining order enjoining the implementation and/or enforcement of the Special Order of September 3, 1985.

On September 9, 1985, HILTON, et al. filed in AC-G.R. No. SP-07020 an urgent ex-parte motion to deputize Manila police authorities to enforce/implement the restraining order of September 5, 1985.[8] This was opposed by DELBROS.

On September 11, 1985, the First Special Cases Division of the IAC issued a resolution reiterating "the continuing efficacy of its restraining order dated September 5, 1985, enjoining the parties to conform to the restraint against the execution/ implementation of the Special Order dated September 3, 1985 xxx,"[9] and on September 24, 1985 granted HILTON's motion to deputize Manila police authorities to enforce the restraining order of September 5, 1985.[10]

DELBROS forthwith filed on September 25, 1985 an urgent motion for reconsideration of the resolution dated September 24, 1985. When more than a month had elapsed without the IAC acting on its motion for reconsideration, petitioner filed the instant petition assailing as null and void the three orders issued in AC-G.R. No. SP-07020, and raising the following questions of law:

[1]

Can a temporary restraining order, or a writ of preliminary injunction, for that matter, prohibit an act already performed and accomplished?

[2]

Can a party in legal and actual possession and control be deprived of the same by means of a temporary restraining order?

[3]

Can a temporary restraining order continue to be enforced beyond twenty (20) days from its issuance, contrary to paragraph 8 of the Interim or Transitional Rules and Guidelines relative to the implementation of the Judiciary Reorganization Act of 1981. (B.P. 129)?[11]

In their comment, private respondents HILTON, Achim Ihlenfeld [successor of Chapman] and Flaviano Mosquera, Jr. assailed the veracity of the Partial Sheriff's Return, contending that no take-over of the hotel's management was ever effected as no advice to surrender their offices was given to either Ihlenfeld and Mosquera, Jr., and that it is HILTON which continues to run and manage the hotel and which is recognized by the employees as manager thereof; that the twenty-day lifespan of a temporary restraining order provided under B.P. 224 does not apply to the Court of Appeals; and that, at any rate, the Special Order of September 3, 1985 which granted petitioner's motion for execution pending appeal is null and void, having as its basis an invalid judgment by default.

As aforesaid, the instant petition is focused primarily on the interlocutory orders dated September 5, 11 and 24, 1985 issued in AC-G.R. No. SP-07020. These orders, however, are so inextricably connected with the default order of July 9, 1985, the default judgment of July 15, 1985 as well as the Special Order dated September 3, 1985, that to simply limit ourselves to said orders would afford the parties neither complete relief nor substantial justice. Thus, it becomes imperative that we should delve further back into the proceedings taken in the trial court and in the process, preempt the jurisdiction of the appellate court before which the question of legality and propriety of the Special Order of September 3, 1985 had been brought as well as the appeal filed by private respondents HILTON and Ihlenfeld [as successor to Chapman] from the judgment by default.

Private respondents HILTON and Chapman were declared in default for failure to file an answer to the Supplemental Complaint. This is reversible error.

Fundamentally, default orders are taken on the legal presumption that in failing to file an answer, the defendant does not oppose the allegations and relief demanded in the complaint. In the case at bar, however, no such presumption can arise visa-vis the Answer filed by HILTON and Chapman to the original complaint; their institution of the certiorari proceedings in AC-G.R. No. SP-06474 in opposition to petitioner's attempt to interfere with and/or take over the control and management of the hotel pendente lite; and their vigorous opposition to the admission of the supplemental complaint under consideration. These factors, of which the trial judge had full knowledge and notice, should have cautioned him from precipitately rendering the default order as well as the default judgment.

"A supplemental pleading is not like an amended pleading — a substitute for the original one. It does not supersede the original, but assumes that the original pleading is to stand, and the issues joined under the original pleading remain as issues to be tried in the action." [12] While it is conceded that there is authority in support of a default judgment being predicated upon defendant's failure to answer a supplemental complaint, [13] the same cannot apply here. The reason is that although in the supplemental complaint, the relief prayed for was altered from termination of the management contract to judicial confirmation of its termination, the basic and principal issue of whether or not petitioner was entitled to terminate the management contract, remained. As this basic issue had been previously traversed and joined by the Answer filed by HILTON and Chapman, there was no necessity for requiring them to plead further to the Supplemental Complaint. Consequently, the trial judge did not have a legal

ground for declaring them in default for such failure to plead.

Another factor which the trial judge should have considered is that the supplemental complaint brought in an additional defendant, Flaviano Mosquera, Jr. On this score, it would have been more prudent under the liberal construction rule provided in Section 2, Rule 1 of the Rules of Court, for the trial court to have treated the supplemental complaint as an amended complaint, and the original answer thereto as sufficient;^[14] or otherwise to have waited for the answer of the newly-impleaded defendant before acting on the motion to declare the original defendants in default and rendering the default judgment, considering that a common cause of action has been asserted against the three defendants, so that the answer of Mosquera, Jr. could inure to the benefit of the original defendants.^[15] As it turned out, the Answer filed on July 18, 1985 was for and in behalf of all the defendants. Hence, under Sec. 4 of Rule 18, the court shall try the case against all upon the answer filed and render judgment upon the evidence presented.

Indeed, no prejudice would result to petitioner had the trial judge taken a more prudent and judicious course of action as above suggested. Acting as the trial judge did, grave, irreparable and serious damage was caused to private respondents. Such prejudice is compounded by the issuance of the Special Order of September 3, 1985 decreeing the execution pending appeal of the default judgment at a time when defendant Mosquera was not yet declared in default. Consequently, any defense set up by him for himself and for the benefit of his co-defendants was rendered practically inutile by the execution of the default judgment.

Time and again, this Court has expressed disfavor toward default judgments^[16] for the reason that:

"A default judgment does not pretend to be based on the merits of the controversy. Its existence is justified by expediency. It may, however, amount to a positive and considerable injustice to the defendant. The possibility of such serious consequences necessarily requires a careful examination of the circumstances under which a default order was issued. And when no real injury would result to the interests of the plaintiff by the reopening of the case, the only objection to such action would, therefore, be solely on a technicality. On such an infirm foundation, it would be a grievous error to sacrifice the substantial rights of a litigant."^[17]

Upon these considerations, the order of default dated July 9, 1985, the default judgment of July 15, 1985 as well as the Special Order dated September 3, 1985, should be, as they are hereby set aside.

With this conclusion, We could very well write *finis* to this opinion, were it not for an important legal issue raised herein that has long awaited resolution by this Court; namely, whether or not paragraph 8 of the Interim Rules and Guidelines promulgated by this Court relative to the implementation of the Judiciary Reorganization Act of 1981 applies to the Court of Appeals.

The provision in the Interim Rules and Guidelines adverted to reads in full,, thus:

"8. Preliminary injunction not granted without notice; issuance of restraining order. — No preliminary injunction shall be granted without notice to the defendant. If it shall appear from the facts shown by affidavits or by verified complaint, 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 a restraining order to be effective only for a period of twenty days from date of its issuance. Within said twenty day period, the court must cause an order to be served on the defendant, requiring him to show cause, at a specified time and place, why the injunction should not be granted, and determine within the same period whether or not the preliminary injunction shall be granted, and shall accordingly issue the corresponding order. In the event that the application for preliminary injunction is denied, the restraining order is deemed automatically vacated."

The applicability of the above-quoted provision to the then Intermediate Appellate Court, now the Court of

Appeals, can hardly be doubted. The Interim Rules and Guidelines were promulgated to implement the Judiciary Reorganization Act of 1981[18] which included the Intermediate Appellate Court among the courts reorganized thereunder. This is emphasized in the preamble of the Interim Rules which states that the same shall apply to "all inferior courts according to the Constitution." The term "inferior courts" as used therein refers to all courts except the Supreme Court, the Sandiganbayan and the Court of Tax Appeals. Thus, paragraphs 14 and 15 of the Interim Rules expressly provide for "Procedure in the Intermediate Appellate Court."

Indeed, if paragraph 8 of the Interim Rules were not intended to apply to temporary restraining orders issued by the respondent Court, there would have been absolutely no reason for the inclusion of said paragraph in the Interim Rules. The limited life-span of temporary restraining orders issued by the regional trial courts and municipal trial courts is already provided for in B.P. Big. 224. It was precisely to include the Intermediate Appellate Court within the same limitation as to the effectivity of its temporary restraining orders that B.P. Big. 224 was incorporated in the Interim Rules, with the significant change of the word "judge" to "court," so as to make it clear and unequivocal that the temporary restraining orders contemplated therein are those issued not only by trial judges but also by justices of the appellate court.

Private respondents argue that it is impractical to apply paragraph 8 of the Interim Rules to the respondent court because the latter's processes are enforceable throughout the country and there could be instances when the twenty-day period of the effectivity of a temporary restraining order would lapse before it is served on the parties concerned. This allegation appears to be more illusory and imaginary than real. Private respondents have not cited any single, actual instance when such eventuality had occurred. Its possibility is deemed remote and unlikely considering the present state of fast and efficient modes of communication as well as the presumed eagerness of a party-litigant who has secured a temporary restraining order to have the same immediately served on the parties concerned with the least waste of time.

WHEREFORE, the instant petition is hereby DISMISSED. The default order of July 9, 1985, the default judgment dated July 15, 1985 and the Special Order of September 3, 1985 issued in Civil Case No. 85-29489 of the Regional Trial Court of Manila are hereby annulled and set aside. The Answer dated July 18, 1985 filed by herein private respondents in said case is ordered admitted and the case is remanded for trial on the merits. No pronouncement as to costs.

SO ORDERED.

Yap, Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, and Cortes JJ., concur.

Teehankee, C.J., with a separate concurring opinion.

Melencio-Herrera, J., joins the concurring and dissenting opinion of Mr. Justice Gutierrez. Close the all doubts.

Narvasa, J., took no part.

[1] Complaint, pp. 276-290. Rollo.

[2] Pp. 452-464, Rollo.

[3] Pp. 212-213, Rollo.

[4] Pp. 483-484, Rollo.

[5] Pp. 54-55, Rollo.

[6] Pp. 107-108, Rollo.

[7] Pp. 109-122, Rollo.

[8] Pp. 124-126,, Rollo.

[9] P. 133, Rollo.

[10] Pp. 134-135, Rollo.

[11] P. 12, Rollo.

[12] 61 Am Jur 2d 286.

[13] Rio Grande bam & Irrigation Co. v. United States, 215 US 266, 54 L Ed. 190, 30 S Ct. 97, cited in 61 Am Jur 2d 287.

[14] Sec. 3, Rule 11, Rules of Court.

[15] Sec. 4, Rule 18, Rules of Court.

[16] Trajano v. Cruz, 80 SCRA 712; Flora v. Nicolas. 87 SCRA 58; Peggy v. Tapucar, 88 SCRA 785; Zenith Insurance Corp. v. Purisima. 114 SCRA 62; Yellow Ball Freight Lines, Inc. v. Belfast Surety & Insurance Co., Inc.. 119 SCRA 106 and Continental Leaf Tobacco [Phil.], Inc. v. IAC, 140 SCRA 269.

[17] Amante v. Sunga, 64 SCRA 192.

[18] B.P. Big. 129.

CONCURRING:

TEEHANKEE, C.J.,

The fourteen participating members of the Court are unanimous in their concurrence in the Court's basic judgment on the merits annulling the trial court's questioned default order and judgment and special order of execution against respondent-defendant Hilton International Company and remanding the case back to the trial court for trial on the merits.

Clearly, the trial court exceeded its jurisdiction and acted with grave abuse of discretion in rendering the default judgment against said respondent-defendant with respect to the supplemental complaint for failure to answer petitioner-plaintiff's supplemental complaint (which supplemented but did not supersede the original complaint and merely altered the relief prayed for from termination of the management contract over the Manila Hilton Hotel to judicial confirmation of its alleged termination) when the basic and main issue of whether or not petitioner was entitled to terminate respondent's management contract as joined by respondent's answer to the original complaint had yet to be tried and adjudicated on the merits. There was no need for respondent to file yet another answer to the supplemental complaint, since its answer to the original complaint stood as answer on the selfsame issue raised in the supplemental complaint, in the same way that a plaintiff's original complaint stands as answer to a compulsory counterclaim filed by defendant with his answer.

There are, however, four dissenting votes in the separate concurring and dissenting opinion filed, vis a vis the ten-member majority ruling (on the procedural issue raised by petitioner) that the twenty-day period of effectivity of a temporary restraining order issued ex-parte (within which period it must be replaced with a preliminary injunction issued after prior notice and opportunity given the defendant to show cause why such injunction should not be granted) is applicable to all lower courts established by law under the Constitution, including the Court of

Appeals.

There is here an O. Henry twist. The majority upholds petitioner's submittal that the lifetime of temporary restraining order issued ex parte is limited to 20 days if no preliminary injunction is issued with notice and opportunity for the defendant to be heard in the interval, while the minority sustains the contrary view, insofar as the Court of Appeals is concerned, i.e., that the 20-day limit should not apply to the Court of Appeals. If this issue were not procedural in character, then petitioner should prevail instead of having its petition at bar dismissed. But as is evident, respondent has instead prevailed, notwithstanding the rejection of its contrary view sustained by the minority that the lifetime of the Court of Appeals' temporary restraining order should be without limit, since the Court has unanimously ruled on the substantive issue that the Court of Appeals correctly issued the temporary restraining order against execution of the void default judgment wrongfully issued by the trial judge.

So, the 20-day limitation on the effectivity of the Court of Appeal's temporary restraining order against enforcement or execution of the default judgment became irrelevant, in view of this Court's unanimous ruling on the substantive issue that such default judgment was void for having been issued with grave abuse of discretion and in excess of jurisdiction. Thus, petitioner has won the argument but nevertheless lost the case.

If petitioner had insisted in the Court of Appeals on its correct stand on the temporary restraining order's limited 20-day lifetime, all that the Court of Appeals would have had to do was replace the temporary restraining order with a preliminary injunction with bond, as required by the law (B.P. Big. 224, approved April 16, 1982) and the Interim Rules (Section 8) of the January 11, 1983. Since petitioner chose not to await the Court of Appeal's action on its motion for reconsideration and instead to file the petition at bar with prayer for a temporary restraining order against enforcement of the Court of Appeals' temporary restraining order against it, this Court's refusal to issue such temporary restraining order indicated that petitioner had not shown a clear prima facie right thereto and presaged this Court's ultimate ruling at bar on the merits that the trial court's default judgment on the supplemental complaint was null and void and its execution had been properly and correctly restrained by the Court of Appeals. In other words, it is as if this Court, bound by no twenty-day limitation, had itself directly issued a temporary restraining order against execution of the trial court's void default judgment.

The purpose of this concurrence is simply to place the issue at bar on the applicability of the legislative twenty-day limitation on the lifetime of temporary restraining orders to the Court of Appeals in proper balance and perspective, in addition to the sound and valid reasons stated in the Court's decision.

Firstly, the majority ruling in no way indicates a lack of appreciation of the Court of Appeals' acknowledged importance and worth "as our partner in the administration of justice" nor does it "equate" them with municipal courts and regional trial courts, as misperceived in the concurring and dissenting opinion. The fact is that under both the 1935[1] and the 1973[2] Constitutions, the legislature was granted the authority to repeal, alter or supplement the Rules of Court. Pursuant thereto, the Batasang Pambansa enacted B.P. Big. 224 amending Section 5 of Rule 58 of the Rules of Court "regulating the issuance of restraining orders" and imposing a twenty-day effectivity period for such restraining orders issued exparte, as adopted in Section 8 of the Court's Interim Rules and Guidelines. The Batasang Pambansa meant this legislative amendment of the Rules of Court (approved on third reading on March 22, 1982 with 111 yeas and no nays or abstentions[3]) to apply to all courts, including the Supreme Court, as shown in the response of the bill's (B.P. Big. 293) author and sponsor Hilario G. Davide, Jr. during the deliberations on March 9, 1982:

"Mr. Seno. If this bill is passed into law, would it apply to restraining orders the Supreme Court!

Mr. Davide. Mr. Speaker, it will apply to all courts.

Mr. Seno. Thank you, Mr. Speaker. I want to make it of record so that the intention of the bill will be clear."[4]

But the Supreme Court nevertheless has never considered itself bound by such twenty-day limitation of temporary restraining orders issued by it in the exercise of its certiorari jurisdiction, where such restriction could be taken as a violation of the fundamental principle of separation of powers or an interference by the legislature with the Supreme Court's exercise of its judicial power of settling and adjudicating actual controversies involving rights that are legally demandable and enforceable in much the same way that this Court would not interfere with the legislative power of enacting the laws of the land. As stressed by the Court in its decision in *PCGG vs. Hon. Emmanuel G. Pena*, G.R. No. 77663, promulgated this month also, "(E)xecutive Order No. 1 thus effectively withholds jurisdiction over cases against the Commission [PCGG] from all lower courts, including the Court of Appeals, except the Sandiganbayan in whom is vested original and exclusive jurisdiction and this Court. Early on, in special civil actions questioning challenged acts of the Commission, its submittal that the cited Executive Order bars such actions in this Court was given short shrift, because this Court, as the third great department of government vested with the judicial power and as the guardian of the Constitution, cannot be deprived of its certiorari jurisdiction to pass upon and determine alleged violations of the citizens' constitutional and legal rights under the Rule of Law." In other words, the legislature was constitutionally empowered under the 1935 and 1973 Constitutions to alter or modify the Rules of Court, as it did under B.P. Big. 224, subject of this case. But this Court was and is exempt from such legislature-made Rule. Manifestly, the Court could not extend this exemption pertaining to the Supreme Court as a constitutional Court and repository of the judicial power to a constitutionally lesser court established by law such as the Court of Appeals.

(Parenthetically, it is noteworthy that the power given to Congress to repeal, alter or supplement the Rules of Court as promulgated by the Supreme Court has now been deleted and excluded from our new Constitution [Art. VIII, Sec. 5(5), 1987 Constitution].)

Secondly, the case at bar serves but to stress once more that the adjudication of cases is not subject to mathematical formulas or arithmetical timetables. But such periods and deadlines for the filing of pleadings and effectivity of interlocutory orders are necessary for the orderly administration of justice. Here, the amendatory law provides the practical alternative that the issuing court (including the Court of Appeals) must replace the temporary restraining order within the 20-day period, if it finds the plaintiff entitled to the injunctive relief after notice and hearing the adverse party's side, with a preliminary injunction with the corresponding injunction bond, which under the Rules of Court, must be in an adequate amount to indemnify the party enjoined for any loss or damage should the injunction be found to have been wrongfully issued. But in extreme cases, such as the case at bar, where the legislative deadline has not been followed (by the Court of Appeals, in this instance), substantial justice will still prevail over the procedural rule and the injunctive relief against a void default judgment will nevertheless be granted and made permanent with a decision on the merits.

Lastly, the statement in the concurring and dissenting opinion describing as "not only gratuitous but false" the majority opinion's basis for rejecting the argument that the twenty-day life of a temporary restraining order is impractical and insufficient, as there could be instances when the twenty-day life of the order would lapse before it is served on the parties concerned, is to be regretted. The rejection has sound basis in its statement of fact that not a single actual instance has been cited wherein such eventuality has occurred in a case of the Court of Appeals. Then, the argument of impracticality and shortness of the time go to the wisdom, and not the conceded validity, of the legislature's imposition of the twenty-day lifetime of the restraining order — which was beyond the Court's jurisdiction to modify or set aside. Besides, as above indicated, the law provides a practical alternative, when the twenty-day period is found inadequate — which is, to replace the restraining order with a no-time-limit preliminary injunction covered by an injunction bond.

[1] Art. VIII, Sec. 13, 1935 Constitution Provides: "xxx The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines."

[2] Art. X, Sec. 5(5), 1973 Constitution provides: "The Supreme Court shall have the following powers: xxx Promulgate rules concerning pleading, practice and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered or supplemented by the Batasang Pambansa."

[3] Record of the proceedings of the Batasang Pambansa, March 22, 1982.

[4] Journal of proceedings of the Batasang Pambansa, March 9, 1982, p. 3101; Italics supplied.

CONCURRING AND DISSENTING:

GUTIERREZ, JR., J.,

I concur in the setting aside of the July 9, 1985 order of default, the July 15, 1985 default judgment, and the September 3, 1985 special order.

I, however, take strong exceptions to and accordingly dissent from the ruling that would bind the Court of Appeals to the twenty-day life of a restraining order.

The majority opinion blithely discredits the respondents' argument that Court of Appeals processes are enforceable throughout the country and there could be instances when the twenty-day period would lapse before the temporary restraining order is served on the parties concerned. According to the majority opinion, this allegation appears to be more illusory and imaginary than real.

I am sorry to state that such a conclusion is not only gratuitous but false. I served in the Court of Appeals for almost five and a half years. With more than one thousand decisions and full length resolutions that I penned for the appellate court, I humbly believe I can claim first hand knowledge of how long it takes to serve processes in the more distant parts of the country. Twenty days is not enough to serve the restraining order and get the answer or comments of the private respondent.

The more perceptive and distinguished members of the appellate court, the Justices most affected by our ruling, have voiced similar sentiments in their decisions. In *Roberto T. Marquez v. Hon. Jose P. Castro, et al.* (AC-G.R. SP No. 02578, October 18, 1984, the court, through ponente Justice Vicente V. Mendoza, then Chairman and now Supreme Court Justice Edgardo L. Paras, and Justice Luis A. Javellana, stated:

"The respondent spouses impliedly admit the charge but defend themselves on the ground that the temporary restraining order issued in this case expired on February 27, 1984, twenty days after its issuance on February 7, 1984, in accordance with BP Big. 224. The respondents cite the decision in *Dionisio v. Court of First Instance*, 124 SCR A 222 (1983) holding that upon the expiration of twenty days a temporary restraining order likewise expires.

"On the other hand, the petitioner argues that BP Big. 224 applies only to trial courts. He points out that it would be absurd to apply the twenty-day period, which is counted from the date of issuance of the temporary restraining order, to appellate courts because of the possibility at times of serving the order to remote parts of the country before the twentieth day. No such problem can possibly arise in the case of trial courts whose orders granting injunctions can be enforced only within the region, in accordance with Rule 3(a) of the Interim

Rules of Court. The petitioner points out that the case of Dionisio, which is invoked by the respondents, involved a Court of First Instance whose territorial jurisdiction is even more limited than a region.

"There is much to commend the petitioner's interpretation of the law. BP Big. 224 speaks of a 'judge' not 'Justice' of the Intermediate Appellate Court. While in Rule 8 of the Interim Rules of Court the word 'judge' was changed to 'court' it is nevertheless plausible to argue that no substantial change was intended since BP Big. 224 is an act of the legislature and cannot possibly be amended by the Supreme Court under its rule making authority. The Supreme Court may have the primary authority to promulgate a rule of court, but the power to repeal, alter or supplement it belongs to the Batasan Pambansa under the Constitution. (Art. X, Sec. 5 [5])

"That is what was done in the case of the rule on injunction. The Supreme Court promulgated the Rules of Court, Rule 58, Section 5 of which provides for the issuance of injunctions. By means of BP Big. 224 the Batasan Pambansa amended Rule 58, Section 5. We do not believe that the Supreme Court can in turn amend the amendatory statute, consistently with the Constitution."

The situation has not changed much since 1982 when I joined this Court on 1984 when the Marquez decision was promulgated. If at all, communications in the country have worsened I agree with the appellate court that B.P. Big. 224 is intended only for regional trial courts, metropolitan trial courts, and municipal trial courts not the Court of Appeals. And certainly, not the Supreme Court. I was also a member of the Supreme Court when the Interim Rules were adopted and no matter how intensely I rack my memory, I simply cannot remember any deliberations which indicate that it was ever our intention to include the Court of Appeals in the twenty-day limitation.

My objections to the twenty-day rule for restraining orders of the Court of Appeals are, however, based on reasons more weighty than mere statutory construction or even the realities of the situation. To my mind, the ruling indicates a sad neglect on our part to properly appreciate the importance and worth of the Court of Appeals as our partner in the administration of justice.

Like the Supreme Court, the Court of Appeals is a national court whose jurisdiction embraces the entire country. The same reasons which impel us to exempt our restraining orders from the twenty-day rule apply with equal force to the Court of Appeals.

More important, however, it is the Court of Appeals which enables us to function as a "supreme court" or a court of cassation.

As this Court stated in *Braulio Conde, et al. v. Intermediate Appellate Court, et al.* (144 SCRA 144): I

"There are instances when this Court desires a further review of facts or a detailed analysis and systematic presentation of issues which the appellate court is in a more favored position to accomplish. Standing between the trial courts and the Supreme Court, the appellate court was precisely created to take over much of the work that used to be previously done by this Court. It has been of great help to the Supreme Court in synthesizing facts, issues, and rulings in an orderly and intelligible manner and in identifying errors which ordinarily might have escaped detection. Statistics will show that the great majority of petitions to review the decisions of the appellate court have been denied due course for lack of merit in minute resolutions. The appellate court has, therefore, freed this Court to better discharge its constitutional duties and perform its most important work which, in the words of Dean Vicente G. Sinco, 'is less concerned with the decision of cases that begin and end with the transient rights and obligations of that particular individuals but is more intertwined with the direction of national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights.' (Philippine Political Law, 10th Edition, p. 323 xxx." (at pp. 149-150)

Since the Court of Appeals has freed us to better perform our constitutional duties, it is imperative that we should not deny it the tools with which to discharge its own functions faithfully and speedily. Its members should be

chosen with the same care and scrupulous attention given to the search for Supreme Court Justices. Their compensation and allowances should not be too different from that given to us. And instead of being equated with municipal courts and regional trial courts, the Court of Appeals should be regarded as a court closer to the Supreme Court than any other court.

I am, therefore, constrained to regretfully dissent, in part, from the majority decision.

Feliciano and Grino-Aquino, JJ., concur.

CONCURRING AND DISSENTING:

MELENCIO-HERRERA, J.,

I join the Concurring and Dissenting Opinions of Mr. Justice Gutierrez. To settle all doubts, now that the revisions of the Rules of Court is ongoing, a categorical rule on the inclusion/ exclusion of the Court of Appeals from the coverage of the 20-day life-span of restraining orders, should be laid down.

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