

SPOUSES ESTANISLAO AND EDNA CARBUNGCO, PETITIONERS, VS. COURT OF APPEALS, TENTH DIVISION, AND SPOUSES ELIAS AND ISIDRA CUNANAN, RESPONDENTS.

G.R. No. 78265. January 22, 1990

Ponente: PARAS, J.

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PARAS, J.:

The sole issue in this case is whether or not the respondent Court of Appeals may issue another temporary restraining order of indefinite duration after the first had automatically expired on the twentieth (20th) day of its issuance without private respondents having taken steps to obtain a preliminary injunction.

Respondents were required to comment on the petition in a resolution of this Court dated May 20, 1987. For failure of respondents to file their comment, petitioners filed a Motion for judgment on the pleadings which was received by this Court on August 5, 1987. Respondents were ordered to comment on the aforesaid motion, in a resolution dated August 26, 1987. Again, respondents failed to file their comment. The Court, in a resolution dated February 15, 1988, gave due course to the petition and considered this case submitted for deliberation.

Petitioners invoke the corrective powers of this Court to set aside the second restraining order which had been allegedly issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

This petition is impressed with merit.

The record discloses that a restraining order was issued against petitioners by respondent court on March 11, 1987 (p. 9, Rollo). On April 9, 1987, respondent Court issued another restraining order "in view of the special circumstances under which this case is being heard x x x." (p. 47, Rollo)

There is no doubt that the Court of Appeals may issue a temporary restraining order as held in the case of *Delbros Hotel Corporation v. Intermediate Appellate Court* (GR No. 72566, April 12, 1988). In that case, this Court held that Sec. 5 of Rule 58 of the Rules of Court as amended by BP Blg. 224, which reads:

"Sec. 5. 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 the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice, the judge to whom the application for preliminary injunction was made, may issue a restraining order to be effective only for a period of twenty (20) days from date of its issuance. Within the said 20-day period, the judge 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."

is also applicable to the Court of Appeals.

Under the said provision, a judge (or justice) may issue a temporary restraining order with a limited life of 20 days from date of issue. In the case of *Board of Transportation v. Castro*, 125 SCRA 410, We held:

"If before the expiration of the 20-day period the application for preliminary injunction is denied, the temporary restraining order would thereby be deemed automatically vacated. If no action is taken by the judge on the application for preliminary injunction within the said 20 days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary. A temporary restraining order CAN NO LONGER EXIST INDEFINITELY for it has become truly temporary." (p. 5, Rollo)

The second restraining order issued is therefore a patent nullity.

PREMISES CONSIDERED, the petition is hereby GRANTED in the sense that the second restraining order is SET ASIDE and this case is REMANDED to the respondent Court of Appeals for resolution on the merits.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

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