

**ORTIGAS & COMPANY LIMITED PARTNERSHIP, PETITIONER,
VS. COURT OF APPEALS AND SPS. DALTON B. KING AND CECILIA F.
KING, RESPONDENTS.***G.R. No. 79128. June 16, 1988*

Ponente: YAP, C.J.

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Challenged in this petition is the writ of preliminary mandatory injunction issued by the respondent Court of Appeals directing the petitioner herein to reconnect and restore the electrical service to Gondola Unit No. 8 of private respondent at the Greenhills Shopping Center upon the filing by the latter of an injunction bond in the amount of P15,000. The respondent court annulled and set aside the order of the Regional Trial Court of Pasig, Metro Manila, Branch 152, dated March 19, 1987 entitled "Dalton B. King, et al. vs. Ortigas and Company, Limited Partnership" dated March 19, 1987, which denied plaintiffs application for preliminary mandatory injunction.

We deal in this case only with the matter of the issuance of the writ of preliminary mandatory injunction to compel petitioners to reconnect the electrical service to private respondents. We are not called upon to review the merits of the case, for this has still to be tried and decided by the court a quo.

The antecedent facts are as follows:

In a letter agreement dated October 28, 1983, Ortigas and Company, Limited Partnership (Ortigas for brevity) through its Greenhills Shopping Center (GSC) Manager, Manuel Lozano, Jr., leased to Wellington Syquiatco a unit in Gondola alley (Unit No. 8) at Greenhills Shopping Center, San Juan, Metro Manila for a period of ten (10) years at a monthly rental of P1,500.00 starting December 1, 1983 and increasing gradually every year thereafter. The subject unit was used for the operation of a snack counter, known as "Pied Piper."

On May 10, 1984, Wellington Syquiatco, with the approval of Ortigas, subleased the subject unit to herein respondent spouses (King spouses for brevity) who occupied the premises effective May 15, 1984. Later, Wellington Syquiatco, for valuable consideration (P97,000.00) sold to King spouses his leasehold rights and obligations over the subject Gondola/unit. This transfer of rights was approved by Ortigas on September 18, 1984.

In August, 1985, Ortigas dismissed its GSC Manager and undertook an audit of his performance. Ortigas discovered that the letter-lease agreements signed by the GSC Manager, allegedly without appropriate authority, uniformly included a clause providing that "6. Electric and water bills shall be for our {i.e. Ortigas) account." Ortigas also discovered later that the GSC Manager owned one Gondola unit (Unit No. 1).

Ortigas' new manager, Jose Lim III, met with the Gondola lessees in March 1986 and proposed to correct the inequities in the lease agreements. Individual electric meters were to be installed in the respective units. A new contract for the Gondola units was submitted to the lessees, which provided among others that "electric and other utility costs" were for the lessees' account. The Kings did not sign the new lease agreement.

The electricity bill for May and June, 1986, amounted to P3,480.02 (including cost of meter installation) and P2,456.53, respectively, which Ortigas tried to collect from the King spouses. In a letter dated July 28, 1986, the latter protested the bill, citing paragraph No. 6 of the letter contract of October 28, 1983 which provided that electric and water bills were for the account of Ortigas.

The subsequent electricity bills for the months of July, August, September and October amounted to P2,069.06, P2,097.74, P2,018.10 and P2,051.58, respectively, which including the unpaid bills for May and June, totalled P14,174.03. When the Kings refused to pay the bill, Ortigas disconnected the electricity supply to them. As a consequence, the Kings filed on January 16, 1987, a complaint against Ortigas with the Regional Trial Court of Pasig, Metro Manila, Branch 152, docketed as Civil Case No. 54202, for specific performance and damages, with prayer for the issuance of a writ of preliminary mandatory injunction to compel restoration and reconnection of the electric power supply to plaintiffs' Gondola unit. Ortigas filed an opposition, dated February 9, 1987, to plaintiffs' application for a writ of preliminary mandatory injunction, alleging among others that there was a typographical error in Paragraph No. 6 of the letter agreement, consisting of the omission of the letter "y" from the word "our"; that taking advantage of such typographical error, the plaintiffs consumed electricity amounting to a monthly average of P2,362.17, while paying a monthly rental initially at P1,500.00, thereby making Ortigas subsidize their occupancy of the leased premises to the tune of more than P800 per month. Ortigas further alleged that to grant the writ of preliminary mandatory injunction would allow plaintiffs to enrich themselves unjustly at the expense of defendant.

After hearing the oral arguments of the parties and considering their pleadings, the trial court on March 19, 1987 denied plaintiffs' application for a writ of preliminary mandatory injunction.

The plaintiffs filed a petition with the respondent Court of Appeals for the annulment of the order of the court a quo dated March 19, 1987, denying their application for a writ of preliminary mandatory injunction. As stated above, the respondent appellate court issued its questioned decision dated June 30, 1987, annulling the order of the court a quo and issuing itself the writ of preliminary mandatory injunction prayed for by the Kings upon the filing of a bond of P15,000.00.

The basic issue which we have to determine is whether the court a quo committed a grave abuse of discretion in denying plaintiffs' application for a preliminary mandatory injunction.

We find no such grave abuse of discretion committed by the trial court which would justify the setting aside of its order by the respondent appellate court and the issuance by the latter of the writ of preliminary mandatory injunction.

The writ of preliminary injunction, in general, cannot be sought as a matter of right, but its grant or refusal rests in the sound discretion of the court under the circumstances and the facts of the particular case. The writ is the "strong arm of equity" and therefore should not be used to sanction inequity.

The defendant in the case, the petitioner herein, was able to show that the electricity consumed per month by the King spouses was way above the amount of the monthly rentals which they were paying to the petitioner, thereby in effect making the latter subsidize the business of the former in the leased premises. Such an obviously inequitable situation by which private respondents enriched themselves at the expense of petitioner cannot be ignored, as private respondents wanted the trial court to do, by insisting on a strict adherence to the letter of the contract, which petitioner questioned, alleging inter alia obvious mistake and collusion, and non-approval of the contract by the principal of the signatory for the lessor — defenses which must eventually be considered by the court a quo in deciding the merits of the case. It is thus not a simple case of a contracting party having made a bad bargain and who must be made to abide by it. The trial court, considering the equities of the case, refused to issue

the preliminary mandatory injunction. We hold that in refusing to do so the trial court did not commit a grave abuse of discretion.

In general, courts should avoid issuing a writ of preliminary injunction which in effect disposes of the main case without trial. This is precisely the effect of the writ of preliminary mandatory injunction issued by the respondent appellate court. Having granted through a writ of preliminary mandatory injunction the main prayer of the complaint, there is practically nothing left for the trial court to try except the plaintiffs' claim for damages.

WHEREFORE, the appealed decision of the respondent Court of Appeals dated June 30, 1987 is reversed and set aside.

SO ORDERED.

Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

Padilla, J., no part, being a limited partner of petitioner partnership.

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