

**HON. PETE NICOMEDES PRADO, IN HIS CAPACITY AS
OFFICER-IN-CHARGE OF THE DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS, ATTY. JUAN C. STA. ANA, IN HIS CAPACITY
AS MANAGER OF TH...**

G.R. No. 98118. December 06, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

On the basis of an unverified motion, may a court validly issue ex-parte a so-called "status quo order" which could operate either as a temporary restraining order or writ of preliminary injunction?

This is the main issue in this case which the following factual and procedural antecedents have generated:

On 11 September 1920, the Smith Bell and Company leased from the Government, through the Bureau of Lands, Blocks 144 and 145, containing an area of 9,023.36 square meters, located at the Port Area, Manila. The lessee transferred all its leasehold rights to the Philippine Building Corporation on 27 May 1946, which the Secretary of Agriculture and Natural Resources approved. The assignee was able to renew the lease contract, but transferred in 1952 all its rights under the lease agreement to S. Villanueva Enterprises, Inc. (SVEI), which secured on 1 September 1969 a renewal of the contract for another 25 years. On 26 November 1986, the then Minister of General Services ordered the cancellation of the contract for violation by SVEI of its provisions. SVEI appealed the order to the Office of the President which affirmed it in its Order of 29 September 1987. SVEI's several motions for reconsideration were denied. The last denial, which affirmed with finality the 29 September 1987 Order, was issued on 29 January 1990.

Earlier, on 17 March 1988, the President issued Executive Order No. 321 expanding the territorial area of the South Harbor Zone of the Port of Manila and placing the whole area under the jurisdiction of the Philippine Ports Authority (PPA).

On 16 March 1989, the PPA wrote SVEI informing the latter of PPA's intention to take possession of the leased premises and demanding payment of P728,861.38 representing accrued rentals and interests. On 30 June 1989, SVEI offered to restructure its obligations provided that the PPA assured it in writing that the contract of lease will not be terminated. In its letter of 22 August 1989, the PPA rejected the proposal and instead demanded that SVEI vacate the premises within thirty (30) days from receipt of the letter.

Thereafter, the PPA caused to be published a notice of bidding of Blocks 144 and 145 to be held on 28 November 1989. SVEI, however, filed on 23 November 1989 a complaint for Specific Performance, with prayer for preliminary injunction and/or restraining order against the PPA with Branch 38 of the Regional Trial Court of Manila. The complaint sought to enjoin the PPA from conducting the scheduled bidding. The case was docketed as Civil Case No. 89-51192. SVEI invoked its right to remain in the premises until 1994 by virtue of its 25-year renewed contract of lease. The court issued a writ of preliminary injunction enjoining the PPA from proceeding

with the bidding.

In the meantime, on 22 March 1990, the PPA filed with the Metropolitan Trial Court of Manila an ejectment case against SVEI. The case was docketed as Special Civil Action 131889-CV and was assigned to Branch 5 of said court.[1]

Upon the PPA's motion to dismiss Civil Case No. 89-51192, on the ground that the lease contract had already been cancelled, and such cancellation was affirmed by the Office of the President, and that there is a pending ejectment case, Branch 38 of the Regional Trial Court of Manila, through Judge Arturo Barias, Jr., issued on 30 August 1990 an Order dismissing the case. It held that the Government had sufficient ground to cancel the contract of lease in view of the violations of its terms by SVEI and that:

"Secondly, the mere fact that there is an ejectment case filed with the Metropolitan Trial Court of Manila, the Court is of the opinion and so holds that all the issues raised herein, more specifically that of possession, should better be threshed out in the metropolitan trial court involving as they do (sic) the same parties and the same subject matter." [2]

SVEI appealed the order to the Court of Appeals where it is still pending resolution.

In line with its plan to fully maximize the utility of Block 145, the PPA decided to improve and renovate it. Pursuant thereto, it caused to be published in the issues of the Manila Bulletin of 17, 22 and 29 October 1990 an Invitation to Prequalify and Bid for the lease and rehabilitation-development of Block 145. Per the published notice, the opening of sealed bids was set for 28 November 1990 at 2:00 P.M.

On 27 November 1990, herein private respondents Port Area Realty, Inc., Everett Steamship Corporation, Harbor Import Shopping Center, Oriental Media, Inc., and Ester Caling Lim, on her behalf and on behalf of others similarly situated, claiming to be actual occupants of the building located in Block 145, filed a petition[3] with the Regional Trial Court of Manila for Specific Performance with preliminary injunction and/or restraining order against the Philippine Ports Authority, the Department of Transportation and Communication, Atty. Juan C. Sta. Ana, in his capacity as Chairman of the Bidding Committee and the members thereof. They claim to be sublessees of Block 145, which is now a commercial complex. Private respondents Port Area Realty, Inc. and Harbor Import Shopping Center allege that they developed their respective areas into shopping stalls which they leased to interested parties. Private respondent Oriental Media alleges that it is using a portion of its premises for its printing machines but had the rest developed into stalls which are leased to other parties. Private respondent Everett Steamship claims that it is using the premises for its offices while private respondent Lim avers that she is one of the stallholders.

They attached to the petition a copy of the Order of Judge Barias.

The petition was docketed as Civil Case No. 90-55248 and was assigned to Branch 31 of the Regional Trial Court of Manila which is presided over by respondent Judge.

As their cause of action, private respondents allege in their petition that the offer to bid Block 145 is patently discriminatory and deprives them of their property rights without due process of law as there was no notice to them, much less a call for a meeting, despite the knowledge of the PPA-Port District of Manila that they developed, improved and spent for the establishment of the complex. They are "small-time" and struggling businessmen who "could not afford and easily win in such bidding," and that in order to prevent such discrimination and deprivation of their property rights, they should be allowed to negotiate with the Government on such terms and conditions that are appropriate, reasonable and just. They then pray that the court issue an order restraining the defendants from continuing with the bidding of Block 145 and that if it is already auctioned off, to

annul the sale and direct the defendants to negotiate with them for a contract of lease, rehabilitate, operate and/or manage Block 145 under such terms as are reasonable, just and proper and that after trial, render judgment making the preliminary injunction permanent.

The respondent Judge issued on 28 November 1990 a temporary restraining order (TRO) which was, however, served only after the bidding; the bidding itself was declared a failure because only two (2) bidders participated.

Defendants, petitioners herein, filed an opposition to the application for preliminary injunction. This was later followed by their Answer wherein they plead the following special and affirmative defenses:

"1) Plaintiffs, are mere sublessees of S. Villanueva Enterprises Inc. (SVEI); the contract in favor of the latter was cancelled, the validity of which cancellation was upheld in the Order of 30 August 1990 in Civil Case No. 89-51192.

2) An ejectment case against SVEI is pending; considering that a judgment in an ejectment case is binding not only upon the defendant but also against the latter's sublessees, privies, agents and/or successors-in-interest, then the complaint should be dismissed on ground (sic) of *litis pendency*; moreover, plaintiffs are guilty of forum-shopping.

3) Plaintiffs do not have better rights than SVEI; are bidders and/or possessors in bad faith; their possession of Block 145 does not create any vested right; have not availed of appropriate administrative remedies.

4) A negotiated contract, as suggested by plaintiffs, is never a mode to ensure any party the award of a contract."

and interpose a counterclaim for temperate and exemplary damages.[4]

The application for injunction was heard on 7 January 1991 with the private respondents presenting their first witness, Mr. Catalino Luzano, president of the port Area Realty, Inc. The hearing was ordered set for continuation on 15, 17 and 22 January 1991. On 15 January 1991, counsel for private respondents moved for postponement and the hearing was reset for 29 January 1991. On said date, the parties manifested to the court that they had agreed to consider the injunction incident moot and academic because the act sought to be enjoined had already been accomplished. Respondent Judge dictated in open court an order declaring the application for injunction as "deemed abandoned." By agreement of the parties, the pre-trial conference was set for 28 February 1991.

Thereafter, the PPA caused to be published in the 7, 14 and 21 February 1991 issues of the Manila Bulletin another Invitation to Prequalify and Bid for the "lease, renovation and operations of Block 145," setting the pre-bid conference on 16 April 1991 and the submission and opening of sealed bids on 25 April 1991.

On 28 February 1991, private respondents moved for the postponement of the pre-trial on the ground that they had not yet received the notice of pre-trial. The pre-trial was reset for 16 April 1991.

On 15 April 1991, a day before the pre-trial conference, private respondents filed in Civil Case No. 90-55248 an unverified Urgent Motion for the Issuance of a Status Quo Order,[5] alleging therein as follows:

"1. That the Restraining Order issued by this Honorable Court has already lapsed;

2. That the hearing on Plaintiffs' motion for the issuance of a writ of preliminary injunction was then in progress before it was abandoned because of Defendants' assurance that there would be no public bidding to be conducted during the pendency of this case;

3. That Defendants, in violation of this agreement, are intending and threatening to conduct as in fact, a public bidding of the premises was (sic) scheduled to be conducted on April 25, 1991 which, if completed, would render the issues in this case moot and academic."

and praying that “a status quo order be issued enjoining the Defendants and their agents from continuing the scheduled public bidding on April 25, 1991 until after the issues shall have been resolved by the Honorable Court.”[6]

This motion does not contain any notice of hearing to counsel for the defendants (petitioners herein). There is a notice of hearing but it is addressed to the Clerk of Court and reads:

"The Clerk of Court

RTC-Manila

Branch 31

Greetings:

Kindly set the afore-stated Motion for resolution and approval of the Honorable Court on April 15, 1991 at 9:00 A.M. or as soon thereafter at the convenience of the Court."

Above this notice is an entry reading:

"Copy Furnished:

Solicitor Roman G. Del Rosario

Office of the Solicitor General

Salcedo Street, Legaspi Village

Makati, Metro Manila"

Acting on the aforesaid urgent motion on the day it was filed, the respondent Judge dictated in open court an Order wherein he stated that:

"x x x The motion alleges among other things the Prayer for Writ of Preliminary Injunction was abandoned because of Defendants' assurance that there would be no public bidding to be conducted during the pendency of this case.

The movants pointed that in violation of this agreement, the defendants are intending to conduct a public bidding on April 25, 1991 which will render the issues in this case moot and academic.

It is the observation of this court that plaintiffs have insisted in this action their vested rights to enter into negotiations in lieu of public bidding, and in order that the issues will not become moot and academic, the Motion is hereby granted."

and ruled as follows:

"WHEREFORE, both parties are hereby ordered to maintain a status quo condition, that is defendants and their agents are enjoined from continuing the public bidding on April 25, 1991 or any bidding thereafter until the issues shall have been resolved by this Court."[7]

When the case was called for pre-trial on 16 April 1991, as earlier agreed upon by the parties, counsel for private respondents asked for a postponement on the ground that one of them, Atty. Bandayrel, had not yet prepared his Pre-Trial Brief, while the other, Atty. Jurade, claimed that his client, Oriental Media, Inc., had not received its notice of hearing. Despite the objection by counsel for herein petitioners, respondent Judge reset the pre-trial for 16, 23 and, 30 May 1991.

Petitioners then filed on 22 April 1991 the instant petition without even moving for a reconsideration of the status

quo order in view of the urgent necessity for relief pleaded by the government[8] and because such a move would be inadequate.

In Our Resolution of 24 April 1991, We required the respondents to comment on the petition and issued a Temporary Restraining Order enjoining the respondent Judge, his agents, representatives and/or any person acting upon his orders or in his place or stead from enforcing and/or carrying out the above Order of 15 April 1991."

Petitioners herein assert that respondent Judge committed grave abuse of discretion in issuing the challenged status quo order since private respondents' unverified urgent motion for its issuance does not allege any fact or show any clear legal right to justify it and that it was heard without notice to petitioners; additionally, it was issued without requiring private respondents to put up a bond.

In their Comment filed on 6 May 1991, respondents allege that they did not pursue their prayer for a preliminary mandatory injunction because of the assurance of petitioners that the public bidding shall not be held while the resolution of the issues in the case remain pending. However, since petitioners disregarded that commitment, private respondents had to rush to the court a quo for the issuance of a restraining order. The latter argue, *inter alia*, that what the respondent judge issued was not a preliminary injunction but "merely a temporary restraining order, which, as mandated by law, lapses ipso vigore after twenty (20) days from its issuance. Hence, the legal basis for its issuance, that is, without hearing and without requiring the putting up of a bond, should not be under question." [9]

In their Reply filed on 26 June 1991, petitioners insist that the status quo order of 15 April 1991 is a "writ of preliminary injunction, but whether it is a temporary restraining order or a "writ of preliminary injunction, the same was issued despotically and without the least legal basis." If it is to be considered a temporary restraining order, it is, in effect, an extension of the 28 November 1990 TRO, which would be irregular and unlawful per *Defalobos vs. Aquilizan*. [10] Moreover, private respondents are not entitled to the writ since the complaint fails to show a cause of action. Finally, there was no agreement whatsoever that no bidding would be conducted; the claim is a blatant lie, for, at the hearing on 7 January, when Atty. Bandayrel for the private respondents sought to make a misrepresentation on this point, his scheme was immediately aborted, thus:

“Atty. Bandayrel:

But there is already an admission of the defendant that there will be no more bidding with respect to the Block 145, Your Honor.

Solicitor Del Rosario:

There was no admission, Your Honor. There was merely a bidding which was declared a failure. As to whether we will hold another bidding, Your Honor, that depends upon the discretion of the management of the Philippine Ports Authority.

Atty. Bandayrel:

I withdraw that manifestation, Your Honor." [11]

In the Resolution of 3 July 1991, this Court gave due course to the petition and required both parties to file their respective memoranda, which petitioners complied with on 14 August 1991 and the respondents on 6 November 1991. In their Memorandum, respondents come forward with a new theory, namely: The questioned status quo order "was (sic) a mere reinstatement of the previous temporary restraining order already issued which was recalled because of Petitioner's assurance." [12]

We do not hesitate to grant the petition. It is impressed with merit. There is no doubt at all that respondent Judge

had acted with palpable abuse of discretion, so grave that it amounts to lack of jurisdiction, in issuing the status quo order of 15 April 1991. His conduct can vividly be described as despotic, arbitrary and capricious. The following suffice to support this conclusion:

1. Respondent Judge knew, or should have known because it was his duty to read the pleading, that the urgent motion for the issuance of a status quo order does not contain a notice of hearing addressed to the counsel of the adverse parties (defendants, herein petitioners). The notice incorporated therein is a notice addressed to the Clerk of Court. This does not comply with Sections 4 and 5, Rule 15 of the Rules of Court which explicitly provide that the notice shall be served by the applicant to all parties concerned at least three (3) days before the hearing thereof and "shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion." A notice of hearing addressed to the Clerk of Court and not to the parties is no notice at all.

In *Philippine Advertising Counselors, Inc. vs. Revilla*,^[13] this Court, citing prior relevant cases, held:

"Finally, Section 4, Rule 15 of the Rules of Court provides that notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof; together with a copy of the motion, and of any affidavits and other papers accompanying it; and Section 5 of the same Rule requires the notice to be directed to the parties concerned and to state the time and place for the hearing of the motion. A motion which fails to comply with these requirements is nothing but a useless piece of paper [*Manila Surety and Fidelity Co., Inc. v. Bath Construction Company, et al.*, L-16636, June 24, 1965, 14 SCRA 435, 437, citing *PNB v. Donasco*, L-18638, February 28, 1963; *Manakil v. Revilla*, 42 Phil. 81; *Roman Catholic Bishop of Lipa v. Municipality of Unisan*, 44 Phil. 866; and *Director of Lands v. Sanz*, 45 Phil. 117. *Sebastian v. Cabal, etc., et al.*, L-25699, April 30, 1970, 32 SCRA 453, 454-55. *Cledera, etc., et al. v. Sarmiento, etc., et al.*, L-32450-51, June 10, 1971, 39 SCRA 552, 562-576]. In the instant case, there was, according to the trial court in its Order of April 7, 1969, 'no proof that plaintiff was duly served with a copy of the motion for reconsideration.' Moreover, the motion did not contain a notice of hearing directed to petitioner stating the time and place of the hearing. The notice was addressed the Clerk of Court requesting the latter to 'set the foregoing motion for the consideration and approval of this Honorable Court immediately upon receipt hereof.' The notice of hearing caused to be issued by the trial court did not cure the defect of lack of notice, for the duty to give such notice devolves upon the movant, not upon the court [*Magno v. Ortiz, etc., et al.*, L-22670, January 31, 1969, 26 SCRA 692, 695, citing *Fulton Insurance Company v. Manila Railroad Co., et al.*, L-24263, Nov. 18, 1967, 21 SCRA 974. *Cledera, etc., et al. v. Sarmiento, etc., et al.*, *ibid.*]." (underscoring supplied).

We reiterated the above rule in *Sacdalán vs. Bautista et al.*,^[14] and, recently, in *Bank of the Philippine Islands vs. Far East Molasses Corp.*,^[15]

A motion that does not contain a notice of hearing is but a mere scrap of paper; it presents no question which merits the attention and consideration of the Court. It is not even a motion for it does not comply with the rules and, hence, the clerk has no right to receive it.^[16] In *Filipinas Fabricators and Sales, Inc., et al. vs. Hon. Magsino, et al.*,^[17] this Court was more emphatic:

"x x x a motion without notice of hearing is nothing but a piece of paper filed in court, which should be disregarded and ignored. x x x" (underscoring supplied).

The motion in question does not also show that a copy thereof was actually served on counsel for the defendants (petitioners herein). It merely states, copy furnished: without indicating how a copy was so furnished. The respondent Judge could not have failed to notice that the motion was filed only on 15 April 1991 and that there was no sufficient proof of service thereof to counsel for the adverse parties. Section 6, Rule 15 of the Rules of Court provides that "no motion shall be acted upon by the court, without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected." Respondent

Judge knew very well that Government rights and interests were involved and that its appropriate agencies have been resisting not only the claims of private respondents as sublessees but also those of the lessee (SVEI) whose contract of lease had in fact been cancelled and against whom an ejectment suit is presently pending.

No compelling reason existed for acting on the motion on shorter notice. It sought to restrain the holding of a public bidding scheduled on 25 April 1991, a full ten (10) days from its filing. The pre-trial conference had earlier been reset to 16 April 1991. If private respondents had some respect for fairness and were motivated by good faith, they could have very well set the hearing of the motion on 16 April 1991. That there was in fact an absence of urgency is best borne out by the date the motion was prepared. It is dated APRIL 10, 1991.[18] If the movants had actually intended to have had it heard on 15 April, they clearly had sufficient time to comply with the rules without using the cover of "Urgency." Besides, the notice of bidding was last published in the 21 February 1991 issue of the Manila Bulletin. There is no indication at all that private respondents came to know of the publication only on or shortly before 10 April to justify their sense of urgency in preparing the said motion.

Obviously, respondent Judge deliberately defied and ignored the above solemn pronouncements of this Court and disregarded the basic rules on notice if only to grant special favor to movants. To quote a line from *Manila Surety and Fidelity, Co., Inc. vs. Batu Construction Co., et al.*, supra, what he did is "intolerable in a well-ordered judicial system."

What We stated in *Cledera vs. Sarmiento*, supra, bears repeating if only to express the Court's condemnation of callous and defiant disregard of simple rules and settled doctrines:

"To emphasize once more, the directives in Section 2 of Rule 37 and Sections 4, 5, and 6 of Rule 15 of the Revised Rules of Court are as mandatory as they are clear and simple; and non-compliance therewith is fatal to the cause of the movant, because the mere filing of the motion for reconsideration, without the requisite notice of hearing, does not toll the running of the period for appeal. Unless the movant sets the time and place of hearing in the notice and serves the adverse party with the same, the court would have no way to determine whether the party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the rules themselves do not fix any period within which to file his reply or opposition. The rules commanding the movant to serve on the adverse party a written notice of the motion (Section 2, Rule 37) and that the notice of hearing 'shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion' (Section 5, Rule 15), do not provide for any qualifications, much less exceptions. To deviate from the peremptory principle thus uniformly reaffirmed in the latest cases aforecited in, and to exempt from the rigor of the operation of said principle, the case at bar would be one step in the emasculation of the revised rules and would be subversive of the stability of the rules and jurisprudence thereon -- all to the consternation of the Bench and Bar and other interested persons as well as the general public who would thereby be subjected to such an irritating uncertainty as to when to render obedience to the rules and when their requirements may be ignored. We had to draw a line somewhere and WE did when we promulgated on January 1, 1964 the Revised Rules of Court, wherein WE delineated in a language matchless in simplicity and clarity the essential requirements for a valid notice of hearing on any motion, to eliminate all possibilities of equivocation or misunderstanding."

2. The urgent motion for a status quo order is unverified. Whether it be considered as one for a temporary restraining order or for a preliminary injunction, it is still patently insufficient in form and in substance. What is sought to be enjoined is "the scheduled public bidding on April 25, 1991," an event which is not pleaded in or covered by the original petition in Civil Case No. 90-55248 filed on 27 November 1990. It is, therefore, a subsequent event or occurrence which could properly be the subject of a supplemental pleading pursuant to Section 6, Rule 10 of the Rules of Court. But even conceding for the moment that a motion may be allowed for the purpose, such must be verified. This is the logical conclusion which necessarily flows from the mandatory preconditions for the issuance of either a preliminary injunction or a temporary restraining order. Section 4, Rule

58 of the Rules of Court provides that a preliminary injunction may be granted only if: (a) the complaint is verified and (b) the plaintiff files with the clerk of court in which the action is pending the requisite bond; and the pertinent portion of Section 5 thereof, as amended by B.P. Blg. 224, reads:

"Section 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 days from date of its issuance. Within the said twenty-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. x x x" (underscoring supplied).

Thus, if in a pending case, a mere motion for the issuance of a writ of preliminary injunction or temporary restraining order may be allowed in connection with a supervening act, event or occurrence, the motion must also be verified. That said motion is only an incident to a verified petition does not provide an exception to what is stated above since the event against which it is directed is not covered by or within the contemplation of the petition.

In an apparent attempt to be clever, respondent Judge sought to circumvent the above rule by carefully avoiding the use of the term preliminary injunction or temporary restraining order. He just directed the parties to maintain a status quo condition. Unfortunately, such move displayed neither wisdom nor wit, but rather defiance of the rule.

3. The status quo order is in fact a preliminary injunction which enjoins the defendants (petitioner) and their agents from continuing not only the public bidding on 25 April 1991, but also "any bidding thereafter until the issues shall have been resolved by the court a quo. Even if We set aside the requirement of verification for the motion, respondent court cannot validly and lawfully issue it without notice to the defendants and without the compliance of the bond requirement, which is mandatory.[19]

Worse, considering the allegations in the motion and the petition itself, to which is attached as Annex "A" the Order of Judge Barias of 30 August 1990, it is obvious that private respondents have not shown any clear and positive right to be entitled to the protection by the ancillary relief of preliminary injunction. They are mere sublessees. As indisputably shown in the Order of Judge Barias, which dismissed Civil Case No. 89-51192 filed by SVEI, the contract of lease over Blocks 144 and 145 in favor of SVEI had been cancelled and such cancellation was affirmed with finality by the Office of the President on 29 January 1990. Respondent Judge is presumed to have read the petition and this Annex "A", as well as the Answer of the defendants which makes reference to it and attaches as part thereof a copy of the complaint for ejectment against SVEI. Such admissions and pleadings provide enough basis for a denial of the application for preliminary injunction since, in the absence of any further evidence, it is quite obvious that the applicants had failed to show any clear and positive right to the premises. As mere sublessees, they cannot invoke any right superior to that of the lessee, their sublessor. The moment the sublessor. (SVEI in this case) is ousted from the premises, the sublessees would have no legs to stand on.[20] In an ejectment case, sublessees need not even be impleaded as co-defendants with the lessee (sublessor) and a judgment of eviction against the lessee binds the sublessees.[21] As such, they cannot likewise claim any right to a negotiated contract, especially one on their terms because, according to them, they are merely "small-time" or "struggling" businessmen. This would clearly, be against public policy and public interest.

For a writ of injunction to issue, the existence of a clear and positive right especially calling for judicial protection

must be shown; injunction is not to protect contingent or future rights; nor is it a remedy to enforce an abstract right.[22] An injunction will not issue to protect a right not in esse and which may never arise or to restrain an act which does not give rise to a cause of action. There must exist an actual right.[23]

4. Finally, respondents submit that the status quo order "was a mere reiteration of the previous temporary restraining order already issued which was recalled because of petitioners' assurance." This compounds the arbitrariness of respondent Judge's action and his inexplicable propensity to disregard doctrines laid down by this Court. We ruled in *Dionisio, et al. vs. CFI of South Cotabato*[24] that 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. But if no action is taken by the judge on the application within said 20-day period, the temporary restraining order would automatically expire on the 20th day by the sheer force of law.[25] By the terms of B.P. Blg. 224, a temporary restraining order can no longer exist indefinitely. This rule was reiterated in *Board Transportation vs. Castro*:[26] however, to emphasize the automatic expiration, this Court further stated that no judicial declaration to that effect is necessary. In the recent case of *Aquino, et al. vs. Luntok, et al.*:[27] We further made the following pronouncement:

"The 20-day period of effectivity of a TRO is non-extendible; the restraining order automatically terminates at the end of such period without the need of any judicial declaration to that effect. [*Golden Gate Realty Corp. vs. IAC*, 152 SCRA 684]. Any extension would, therefore, ordinarily, be disallowed. But, when injunction is subsequently granted, as in the case at bar, any defect in the order brought about by the extension of its enforceability is deemed cured [Footnote, *Banque De L'Indochine Et De Suez, et al. vs. Torres, et al.*, G.R. Nos. 82405-06, July 10, 1989]."

By no stretch of the imagination then may the earlier TRO, issued on 28 November 1990, be deemed to have been reinstated, revived or resurrected.

Finally, We find to be unsubstantiated the claim of private respondents that petitioners violated the "gentleman's agreement" that no bidding shall be conducted until the issues are resolved. On the contrary, as shown above, the crude attempt of Atty. Bandayrel in the court below to hold the petitioners to an alleged admission was immediately rebuffed by Solicitor Del Rosario and Atty. Bandayrel was compelled to withdraw his manifestation.

WHEREFORE, the instant petition is GRANTED. The challenged status a quo order dated 15 April 1991 issued by respondent Judge in Civil Case No. 90-55248 is hereby SET ASIDE and declared NULL AND VOID.

Costs against private respondents.

IT IS SO ORDERED.

Gutierrez, Jr., Bidin, and Romero, JJ., concur.
Fernan, C.J., on leave.

[1] Rollo, 58-63.

[2] Annex "B" of Petition; Rollo, 34-40.

[3] Annex "C" of Petition; Id., 41-48.

[4] Annex "D" of Petition; Rollo, 49-57.

[5] Annex "E" of Petition.

[6] Id.

[7] Annex "A " of Petition.

[8] Citing NEA vs. Court of Appeals, 126 SCRA 399.

[9] Rollo, 55.

[10] 150 SCRA 55.

[11] Rollo, 68.

[12] Id., 151.

[13] 52 SCRA 246.

[14] 56 SCRA 175.

[15] G.R. No. 89125, 2 July 1991.

[16] Firme, et al. vs. Reyes, et al. 92 SCRA 713, citing Manakil, et al. vs. Revilla, et al., 42 Phil. 81; Roman Catholic Bishop of Lipa vs. Municipality of Unisan, 44 Phil. 866; Director of Lands vs. Sanz, 45 Phil. 117.

[17] 157 SCRA 469.

[18] Rollo, 76.

[19] Siva vs. Reyes, 83 Phil. 416; Villadores vs. Encarnacion, 95 Phil. 913.

[20] Sipin, et al. vs. CFI of Manila, et al., 74 Phil. 649.

[21] Go King, et al. vs. Geronimo, et al., 81 Phil. 445; Guevara Realty, Inc. vs. Court of Appeals, et al., 160 SCRA 478.

[22] Yaptinchay vs. Torres, 28 SCRA 489.

[23] Angela Estate, Inc. vs. CFI of Negros Occidental, 24 SCRA 500; Bua???an Cattle Co. vs. Quintillan, et al., 128 SCRA 276; Talisay Siilay Milling Co., Inc. vs. Court of First Instance, 42 SCRA 577; Integrated Construction Services, Inc. vs. Relova, 65 SCRA 638.

[24] 124 SCRA 222.

[25] Section 5, Rule 58, as amended by B.P. Blg. 224.

[26] 125 SCRA 410.

[27] 184 SCRA 177 (1990).

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