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WILFREDO V. LABIAN  
Division Clerk of Court  
Third Division

JAN 04 2013

Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

EVY CONSTRUCTION AND G.R. No. 207938  
DEVELOPMENT CORPORATION,

Petitioner,

Present:

-versus-

VELASCO, JR., *J.*, Chairperson,  
BERSAMIN,  
LEONEN,  
MARTIRES,\* and  
GESMUNDO, *J.J.*

VALIANT ROLL FORMING SALES  
CORPORATION,

Respondent.

Promulgated:

October 11, 2017

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DECISION

LEONEN, *J.*:

In every application for provisional injunctive relief, the applicant must establish the actual and existing right sought to be protected. The applicant must also establish the urgency of a writ's issuance to prevent grave and irreparable injury. Failure to do so will warrant the court's denial of the application. Moreover, the application for the issuance of a writ of preliminary injunction may be denied in the same summary hearing as the application for the issuance of the temporary restraining order if the applicant fails to establish requisites for the entitlement of the writ.

This is a Petition for Review on Certiorari<sup>1</sup> assailing the October 22, 2012 Decision<sup>2</sup> and June 25, 2013 Resolution<sup>3</sup> of the Court of Appeals in

\* On official leave.

<sup>1</sup> *Rollo*, pp. 3-25.

CA-G.R. SP No. 112737. The assailed judgments found that the Regional Trial Court did not gravely abuse its discretion when it denied Evy Construction and Development Corporation's (Evy Construction) application for the issuance of a temporary restraining order. This application sought to restrain the Register of Deeds from compelling Evy Construction to surrender its owner's copy of Transfer Certificate of Title (TCT) No. 168590 and from further annotating encumbrances relative to a civil case between its predecessor-in-interest and a third party.

On September 4, 2007, Evy Construction purchased a parcel of land covered by TCT No. 134890 in Lipa, Batangas from Linda N. Ang (Ang) and Senen T. Uyan (Uyan). They executed a Deed of Absolute Sale, which was notarized on September 11, 2007. At the time of the sale, no lien or encumbrance was annotated on the title, except for a notice of adverse claim filed by Ang.<sup>4</sup>

On September 18, 2007, the Register of Deeds annotated a Notice of Levy on Attachment on TCT No. 134890.<sup>5</sup> This annotation was by virtue of the Writ of Preliminary Attachment issued by Branch 46, Regional Trial Court, San Fernando, Pampanga in Civil Case No. 13442 entitled *Valiant Roll Forming Sales Corporation v. Angeli Lumber and Hardware, Inc., and Linda Ngo Ang*.<sup>6</sup> Two (2) other encumbrances were also annotated on the title.<sup>7</sup>

Evy Construction registered the Deed of Absolute Sale with the Register of Deeds on November 20, 2007. TCT No. 168590 was issued in its name; however, it contained the annotation of the prior Notice of Levy on Attachment, as well as a Notice of Attachment/Levy upon Realty dated October 2, 2007 and a Notice of Levy on Preliminary Attachment dated November 8, 2007.<sup>8</sup>

Subsequently, the Regional Trial Court rendered a Decision in Civil Case No. 13442 in favor of Valiant Roll Forming Sales Corporation (Valiant). A Writ of Execution and a Notice of Levy were issued against the property covered by TCT No. 134890.<sup>9</sup>

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<sup>2</sup> Id. at 27–34. The Decision was penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Isaias P. Diedican and Nina G. Antonio-Valenzuela of the Thirteenth Division, Court of Appeals, Manila.

<sup>3</sup> Id. at 36–37. The Resolution was penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Isaias P. Diedican and Nina G. Antonio-Valenzuela of the Thirteenth Division, Court of Appeals, Manila.

<sup>4</sup> Id. at 28 and 42.

<sup>5</sup> Id. at 28.

<sup>6</sup> Id. at 48.

<sup>7</sup> Id. at 28.

<sup>8</sup> Id. at 29.

<sup>9</sup> Id. at 28–29.

Evy Construction filed a Notice of Third-Party Claim in Civil Case No. 13442, informing the court that it had already filed with the sheriff an Affidavit of Title/Ownership on May 20, 2008, in accordance with Rule 57 of the Rules of Court.<sup>10</sup> Valiant posted an Indemnity Bond of ₱745,700.00 to answer for any damages that Evy Construction may suffer should execution of the Regional Trial Court Decision proceed.<sup>11</sup>

By virtue of the July 18, 2008 Writ of Execution issued in Civil Case No. 13442, the Sheriff issued a Notice of Sale on Execution of Real Property of Ang's properties, including the property covered by TCT No. 134890.<sup>12</sup> A Certificate of Sale was eventually issued to Valiant as the winning bidder of the property covered by TCT No. 134890.<sup>13</sup>

On October 29, 2009, Evy Construction filed with the Regional Trial Court of Lipa City, Batangas its Complaint for Quieting of Title/Removal of Cloud, Annulment of Execution Sale and Certificate of Sale, and Damages, with application for temporary restraining order and/or preliminary injunction.<sup>14</sup>

It prayed for the issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin the Register of Deeds from compelling it to surrender its copy of TCT No. 168590 and from annotating any further transactions relating to Civil Case No. 13442.<sup>15</sup>

In the hearing for its application for the issuance of a temporary restraining order, Evy Construction claimed that it would suffer great and irreparable injury if the Register of Deeds were restrained from compelling it to surrender the owner's duplicate copy of TCT No. 168590. It claimed that potential investors interested in developing the property "[would] back out of their investment plans if there [was a] cloud of doubt hovering over the title on the property."<sup>16</sup>

On November 9, 2009, the Regional Trial Court issued an Order denying the application for the issuance of a temporary restraining order for having no legal basis. Evy Construction's Motion for Reconsideration was likewise denied in an Order dated December 11, 2009.<sup>17</sup> Hence, it filed a Petition for Certiorari<sup>18</sup> with the Court of Appeals.

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<sup>10</sup> Id. at 52.

<sup>11</sup> Id. at 58–59.

<sup>12</sup> Id. at 69–70.

<sup>13</sup> Id. at 29.

<sup>14</sup> Id. at 72–83.

<sup>15</sup> Id. at 80–81.

<sup>16</sup> Id. at 29.

<sup>17</sup> Id.

<sup>18</sup> Id. at 84–112.

On October 22, 2012, the Court of Appeals rendered its Decision.<sup>19</sup> It held that Evy Construction failed to sufficiently establish its right to the issuance of a temporary restraining order.

According to the Court of Appeals, Evy Construction failed to sufficiently establish that it would suffer grave and irreparable injury if additional recording and annotation of further transactions, orders, or processes relating to the sale of the property to Valiant were made on the title. It observed that the grounds raised already touched on the merits of its Complaint, resolution of which would amount to prejudgment of the case.<sup>20</sup>

The Court of Appeals likewise pointed out that Evy Construction could still sue for damages if the trial court eventually finds that the sale of the property to Valiant was invalid. It also reminded Evy Construction that it had the remedy of proceeding against the indemnity bond posted by Valiant for any damages it might suffer as a result of the sale.<sup>21</sup>

Evy Construction filed a Motion for Reconsideration, which was denied by the Court of Appeals in its Resolution<sup>22</sup> dated June 25, 2013. Hence, this Petition<sup>23</sup> was filed.

Petitioner argues that it was denied due process when its application for preliminary injunction was denied in the same summary proceeding as the denial of its application for a temporary restraining order.<sup>24</sup> Petitioner likewise submits that it was entitled to the injunctive writ applied for since “real estate development is an industry built on trust and public perception.”<sup>25</sup> It explains that the doubt cast by the auction sale and its annotation to the title caused investors to withdraw their investments from petitioner’s housing development project, despite the expenses it already incurred.<sup>26</sup>

Petitioner avers that the issuance of an injunctive writ is necessary to prevent further damage since its “business reputation and goodwill as a real estate developer, once tarnished and sullied, cannot be restored.”<sup>27</sup> It insists that respondent’s indemnity bond in the amount of ₱745,700.00 was not only inadequate compared to petitioner’s investment in the property; it was immaterial since it would be insufficient to restore buyer and investor

<sup>19</sup> Id. at 27–34.

<sup>20</sup> Id. at 30–31.

<sup>21</sup> Id. at 32.

<sup>22</sup> Id. at 36–37.

<sup>23</sup> Id. at 3–25. The Comment (*rollo*, pp. 164–167) was filed on October 11, 2013 while the Reply (*rollo*, pp. 173–181) was filed on October 14, 2013. Parties were directed to submit their respective memoranda (*rollo*, pp. 183–204 and 205–222) on December 11, 2013 (*rollo*, p. 182).

<sup>24</sup> Id. at 192.

<sup>25</sup> Id. at 196.

<sup>26</sup> Id.

<sup>27</sup> Id. at 197.

confidence in the project or in petitioner's competence and reputation as a property developer.<sup>28</sup>

On the other hand, respondent counters that the application for preliminary injunction was never actually set for hearing or resolved by the trial court; thus, it was misleading for petitioner to argue that it was denied due process by the trial court.<sup>29</sup> It maintains that the Court of Appeals did not err in finding that petitioner failed to establish the requisites for the issuance of a temporary restraining order and that petitioner still had adequate remedies in the indemnity bond.<sup>30</sup> Respondent likewise reiterates the Court of Appeals' finding that petitioner already touches on the merits of its Complaint before the trial court, which effectively prejudges the case.<sup>31</sup>

This Court is asked to resolve the following issues:

First, whether or not petitioner Evy Construction and Development Corporation was denied due process when its application for a writ of preliminary injunction was denied in the same proceeding as its application for a temporary restraining order; and

Second, whether or not the trial court committed grave abuse of discretion in denying petitioner Evy Construction and Development Corporation's application for injunctive relief.

## I

Injunction is defined as "a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act."<sup>32</sup> It may be filed as a main action before the trial court<sup>33</sup> or as a provisional remedy in the main action.<sup>34</sup> *Bacolod City Water District v. Hon. Labayen*<sup>35</sup> expounded:

The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the

<sup>28</sup> *Id.* at 198.

<sup>29</sup> *Id.* at 210–211.

<sup>30</sup> *Id.* at 209.

<sup>31</sup> *Id.* at 209–210.

<sup>32</sup> *Bacolod City Water District v. Hon. Labayen*, 487 Phil. 335, 346 (2004) [Per J. Puno, Second Division] citing I REGALADO, REMEDIAL LAW COMPENDIUM 637 (1999).

<sup>33</sup> See *Bokingo v. Court of Appeals*, 523 Phil. 186 (2006) [Per J. Callejo, Sr., First Division].

<sup>34</sup> See RULES OF COURT, Rule 58, sec. 1.

<sup>35</sup> 487 Phil. 335 (2004) [Per J. Puno, Second Division].

provisional remedy of preliminary injunction, the sole object of which is to preserve the status quo until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction.<sup>36</sup>

Petitioner claims that it was denied due process when “no valid hearing for the application for preliminary injunction was ever set” by the trial court and it “was NOT even allowed to present its summary arguments and its witness in support of its application for a [temporary restraining order].”<sup>37</sup>

A temporary restraining order may be issued *ex parte* “to preserve the status quo until the hearing of the application for preliminary injunction[,] which cannot be issued *ex parte*.<sup>38</sup> Otherwise stated, a trial court may issue a temporary restraining order even without a prior hearing for a limited period of 72 hours “if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury.”<sup>39</sup> In this instance, a summary hearing, separate from the application of the preliminary injunction, is required only to determine if a 72-hour temporary restraining order should be extended.<sup>40</sup>

A trial court may also issue *ex parte* a temporary restraining order for 20 days “[i]f it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice.”<sup>41</sup> The trial court has 20 days from its issuance to resolve the application for preliminary injunction. If no action is taken on the application for preliminary injunction during this period, the temporary restraining order is deemed to have expired.<sup>42</sup> Notably, the Rules do not require that a hearing on the application for preliminary injunction be conducted during this period.

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<sup>36</sup> *Id.* at 346–347 citing *Urbanes, Jr. v. Court of Appeals*, 407 Phil. 856 (2001) [Per J. Ynares-Santiago, First Division] and *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431 (2000) [Per J. Kapunan, First Division].

<sup>37</sup> *Rollo*, p. 192.

<sup>38</sup> *Bacolod City Water District v. Hon. Labayen*, 487 Phil. 335, 347 (2004) [Per J. Puno, Second Division] and RULES OF COURT, Rule 58, sec. 5.

<sup>39</sup> RULES OF COURT, Rule 58, sec. 5.

<sup>40</sup> See *Spouses Lago v. Judge Abul, Jr.*, 654 Phil. 479, 490 (2011) [Per J. Nachura, Second Division]: “Rule 58, as amended, mandates a full and comprehensive hearing for the determination of the propriety of the issuance of a writ of preliminary injunction, separate from the summary hearing for the extension of the 72-hour TRO. The preliminary injunction prayed for by the applicant can only be heard after the trial court has ordered the issuance of the usual 20-day TRO. Within that period of 20 days, the court shall order the party sought to be enjoined to show cause at a specified time and place why the injunction should not be granted. During that same period, the court shall also determine the propriety of granting the preliminary injunction and then issue the corresponding order to that effect.”

<sup>41</sup> RULES OF COURT, Rule 58, sec. 5.

<sup>42</sup> See RULES OF COURT, Rule 58, sec. 5.

While Rule 58, Section 4(d)<sup>43</sup> requires that the trial court conduct a summary hearing in every application for temporary restraining order regardless of a grant or denial, Rule 58, Section 5 requires a hearing only if an application for preliminary injunction is *granted*. Thus, Section 5 states that “[n]o preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined.” Inversely stated, an application for preliminary injunction may be *denied* even without the conduct of a hearing separate from that of the summary hearing of an application for the issuance of a temporary restraining order.

In this case, the November 9, 2009 hearing was denominated as a “hearing on the application for temporary restraining order and preliminary injunction.”<sup>44</sup> Petitioner’s counsel was allowed to present its arguments<sup>45</sup> and its witness<sup>46</sup> but conceded that the issues before the trial court were legal in nature.<sup>47</sup> Thus, the trial court resolved that there was no need to present the witness, which petitioner’s counsel accepted without objection:

COURT

[T]he only issue now is purely legal, so there is no need to present your witness.

ATTY. LIMBO

Yes[,] Your Honor.

COURT

We are submitting the Motion for Issuance of Temporary Restraining Order for resolution.

ATTY. LIMBO

Yes, Your Honor.

COURT

Alright, submitted.<sup>48</sup>

Petitioner cannot insist on a separate hearing for the application for preliminary injunction, considering that it accepted that its application would be submitted for decision without the presentation of its witness. The trial court did not find any need to conduct a further hearing on the application for preliminary injunction since petitioner was unable to substantiate its entitlement to a temporary restraining order. In any case, even if a separate

<sup>43</sup> Rules of Court, Rule 58, sec. 4 provides:  
Section 4 . . .

(d) The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff’s return of service and/or the records are received by the branch selected by raffle and to which the records shall be transmitted immediately.

<sup>44</sup> *Rollo*, p. 124.

<sup>45</sup> *Id.* at 131.

<sup>46</sup> *Id.* at 147.

<sup>47</sup> *Id.* at 156.

<sup>48</sup> *Id.* at 157–158.

hearing was granted, petitioner would have presented the same arguments and evidence in the November 9, 2009 hearing. Thus, there can be no denial of due process if the party alleging it has already been granted an opportunity to be heard.

## II.A

Under Rule 58 of the Rules of Court, a preliminary injunction “is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts” or an order “requir[ing] the performance of a particular act or acts.”<sup>49</sup> It is an ancillary relief granted by the court where the main action or proceeding is pending.<sup>50</sup>

In order to be granted the writ, it must be established:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.<sup>51</sup>

The issuance of a writ of preliminary injunction is considered an “extraordinary event,” being a “strong arm of equity or a transcendent remedy.”<sup>52</sup> Thus, the power to issue the writ “should be exercised sparingly, with utmost care, and with great caution and deliberation.”<sup>53</sup>

An injunctive writ is granted only to applicants with “actual and existing substantial rights”<sup>54</sup> or rights *in esse*. Further, the applicant must show “that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent serious

<sup>49</sup> RULES OF COURT, Rule 58, sec. 1.

<sup>50</sup> RULES OF COURT, Rule 58, sec. 2.

<sup>51</sup> RULES OF COURT, Rule 58, sec. 3.

<sup>52</sup> *Pahila-Garrido v. Tortogo*, 671 Phil. 320, 342 (2011) [Per J. Bersamin, First Division] citing 43 CJS Injunctions 18.

<sup>53</sup> *Id.* at 345.

<sup>54</sup> *Id.* at 342.

damage.”<sup>55</sup> Thus, the writ will not issue to applicants whose rights are merely contingent or to compel or restrain acts that do not give rise to a cause of action.<sup>56</sup>

In this case, petitioner alleges that as the registered owner of the property covered by TCT No. 168590, “[i]t has the undeniable right to the full use and possession [of it].”<sup>57</sup>

At the time of the sale between petitioner Evy Construction, Uyan, and Ang, TCT No. 134890 in Uyan’s and Ang’s names did not contain any liens or encumbrances, except for a notice of adverse claim by Ang dated January 21, 1999. However, petitioner admitted that while the Deed of Absolute Sale was executed on September 4, 2007, the property was only registered in its name on November 20, 2007.<sup>58</sup> The encumbrances in respondent’s favor were annotated on September 18, 2007, October 2, 2007, and November 8, 2007,<sup>59</sup> or when the property was still registered under Uyan’s and Ang’s names.

Under the Torrens system of registration, a person who deals with the registered owner of the property is not bound to look beyond the title for any liens or encumbrances that have not been annotated.<sup>60</sup> TCT No. 134890 did not contain a notice of *lis pendens* that could have warned petitioner that the property was under litigation.

The sale between petitioner Evy Construction, Uyan, and Ang was not annotated on TCT No. 134890 at the time of its sale. A sale of property that is not registered under the Torrens system is binding only between the buyer and the seller and does not affect innocent third persons.<sup>61</sup> The Regional Trial Court could not have been faulted for ordering the annotation of the notice of levy on attachment on TCT No. 134890 considering that when the September 18, 2007 Order was issued, the property was still in Uyan’s and Ang’s names.

Thus, in determining whether or not petitioner is entitled to injunctive relief, the courts would have to pass upon the inevitable issue of which between petitioner and respondent has the better right over the property, the very issue to be resolved in the main case.

<sup>55</sup> *Medina v. City Sheriff, Manila*, 342 Phil. 90, 96 (1997) [Per J. Romero, Second Division] *citing Syndicated Media Access Corporation v. CA*, 292 Phil. 61 (1993) [Per J. Bellosillo, First Division].

<sup>56</sup> *Pahila-Garrido v. Tortogo*, 671 Phil. 320, 343 (2011) [Per J. Bersamin, First Division] *citing* 43 CJS Injunctions 18.

<sup>57</sup> *Rollo*, p. 195.

<sup>58</sup> *Id.* at 184–185.

<sup>59</sup> *Id.* at 45–46.

<sup>60</sup> *See Quimson v. Suarez*, 45 Phil. 901 (1924) [Per J. Ostrand, En Banc].

<sup>61</sup> *See Pres. Decree No. 1529, sec. 51 and Spouses Bulaong v. Gonzales*, 672 Phil. 315 (2011) [Per J. Brion, Second Division].

The facts of this case mirror that of *Spouses Chua v. Hon. Gutierrez*,<sup>62</sup> where this Court was confronted with the issue of whether or not a registered lien of attachment is superior to that of an unregistered deed of sale. In *Spouses Chua*, the property was already registered in the Spouses Chua's names when the property was levied. Thus, they argued that, not being the judgment debtors, the property should not have been subjected to an execution sale.

This Court found the argument unmeritorious and held:

[A] levy on attachment, duly registered, has preference over a prior unregistered sale and, even if the prior unregistered sale is subsequently registered before the sale on execution but after the levy is made, the validity of the execution sale should be upheld because it retroacts to the date of levy.<sup>63</sup>

The prior levy on attachment carries over to the new certificate of title, effectively placing the buyers in the position of their vendor under litigation.

However, *Spouses Chua* stated an exception in that “[k]nowledge of an unregistered sale is equivalent to registration.”<sup>64</sup> If a party presents evidentiary proof that the judgment creditor had knowledge of a valid sale between the judgment debtor and an innocent third party, that knowledge would have the effect of registration on the judgment creditor.

As in *Spouses Chua*, respondent's attachment liens dated September 18, 2007, October 2, 2007, and November 8, 2007, if valid, may have been superior to whatever right petitioner may have acquired by virtue of the Deed of Absolute Sale, which was only registered on November 20, 2009. However, the validity of the liens and the validity of the Deed of Absolute Sale are factual matters that have yet to be resolved by the trial court. The trial court must also determine whether or not respondent had prior knowledge of the sale.

Thus, no injunctive writ could be issued pending a final determination of petitioner's actual and existing right over the property. The grant of an injunctive writ could operate as a prejudgment of the main case.

<sup>62</sup> 652 Phil. 84 (2010) [Per J. Peralta, Second Division].

<sup>63</sup> Id. at 92–93

<sup>64</sup> Id. at 94 citing *Winkleman v. Veluz*, 43 Phil. 604, 608 (1922) [Per J. Romualdez, First Division].

## II.B

Even assuming that there is already a final determination of petitioner's right over the property, petitioner still failed to prove the urgent and paramount necessity to enjoin the Register of Deeds from making *further* annotations on TCT No. 168590.

Petitioner prays for the issuance of an injunctive writ to prevent grave and irreparable damage to its reputation as a real estate developer.<sup>65</sup> Indeed, injunctive relief could be granted to prevent grave and irreparable damage to a business entity's goodwill and business reputation.<sup>66</sup>

Injury is considered irreparable if "there is no standard by which [its] amount can be measured with reasonable accuracy."<sup>67</sup> The injury must be such that its pecuniary value cannot be estimated, and thus, cannot fairly compensate for the loss.<sup>68</sup> For this reason, the loss of goodwill and business reputation, being unquantifiable, would be considered as grave and irreparable damage.

In *Yu v. Court of Appeals*,<sup>69</sup> this Court granted an exclusive distributor's prayer for an injunctive writ to prevent a competitor from selling the same product on the ground that the continued sale would "[render] illusory . . . the very purpose for which the exclusive distributorship was conceptualized, at the expense of the sole authorized distributor."<sup>70</sup>

In *Semirara Coal Corporation v. HGL Development Corporation*,<sup>71</sup> this Court upheld the issuance of a writ of mandatory injunction to prevent Semirara Coal Corporation's (Semirara) continued intrusion on HGL Development Corporation's (HGL) property. It also found that Semirara damaged HGL's business standing when it prevented HGL from operating its cattle-grazing business on its property, which "[was] perceived as an inability by HGL to comply with the demands of its customers and sow[ed] doubts in HGL's capacity to continue doing business."<sup>72</sup>

<sup>65</sup> *Rollo*, p. 196.

<sup>66</sup> See *Yu v. Court of Appeals*, 291 Phil. 336 (1993) [Per J. Melo, Third Division] and *Semirara Coal Corporation v. HGL Development Corporation*, 539 Phil. 532 (2006) [Per J. Quisumbing, Third Division].

<sup>67</sup> *Social Security System v. Bayona*, 115 Phil. 106, 110 (1962) [Per J. Bautista-Angelo, En Banc] citing *Crouc v. Central Labor Council*, 83 ALR, 193.

<sup>68</sup> Id. citing *Dunker v. Field and Tub Club*, 92 P., 502.

<sup>69</sup> 291 Phil. 336 (1993) [Per J. Melo, Third Division].

<sup>70</sup> Id. at 340 citing 43 C.J.S. 597.

<sup>71</sup> 539 Phil. 532 (2006) [Per J. Quisumbing, Third Division].

<sup>72</sup> Id. at 546.

In *Philippine National Bank v. RJ Ventures Realty & Development Corporation*,<sup>73</sup> this Court affirmed the issuance of a writ of preliminary injunction to enjoin the extrajudicial foreclosure of Rajah Broadcasting Network's radio equipment pending the resolution of the main case questioning the mortgage. This Court found that the foreclosure would stop the operations of Rajah Broadcasting Network's radio stations. The loss of its listenership and the damage to its image and reputation would not be quantifiable, and thus, would be irreparable.

However, in applications for provisional injunctive writs the applicant must also prove the *urgency* of the application. The possibility of a grave and irreparable injury must be established, at least tentatively, to justify the restraint of the act complained of.<sup>74</sup> It is "[a]s the term itself suggests . . . temporary, subject to the final disposition of the principal action."<sup>75</sup> Its sole objective is "to preserve the status quo until the merits can be heard."<sup>76</sup>

Petitioner alleges that the execution sale and the prior annotations on its title caused "crucial investors and buyers"<sup>77</sup> to withdraw, "notwithstanding the considerable costs and expenses [it] already incurred."<sup>78</sup> This is the grave and irreparable damage it sought to be protected from. However, the feared "damage" was caused by the execution sale and the annotations already made on the title. It even admits that the annotations were "impairing the progress of [its] housing development."<sup>79</sup> In other words, petitioner failed to establish the urgent and paramount necessity of preventing *further* annotations on the title.

Thus, what petitioner actually seeks is the removal of the annotations on its title, which is precisely what it asked for in its Complaint for Quieting of Title/Removal of Cloud, Annulment of Execution Sale and Certificate of Sale, and Damages before the trial court. Injunctive relief would have no practical effect considering that the purported damage it seeks to be protected from has already been done. Therefore, its proper remedy is not the issuance of an injunctive writ but to thresh out the merits of its Complaint before the trial court.

In *Cortez-Estrada v. Heirs of Samut*,<sup>80</sup> this Court held:

<sup>73</sup> 534 Phil. 770 (2006) [Per J. Chico-Nazario, First Division].

<sup>74</sup> See *Olalia v. Hizon*, 274 Phil. 66 (1991) [Per J. Cruz, First Division].

<sup>75</sup> *Olalia v. Hizon*, 274 Phil. 66, 72 (1991) [Per J. Cruz, First Division].

<sup>76</sup> *Rodulfa v. Alfonso*, 76 Phil. 225, 231 (1946) [Per J. De Joya, En Banc] citing *Fredericks vs. Huber*, 180 Pa., 572; 37 Atl., 90.

<sup>77</sup> *Rollo*, p. 196.

<sup>78</sup> Id.

<sup>79</sup> Id.

<sup>80</sup> 491 Phil. 458 (2005) [Per J. Carpio Morales, Third Division].

[T]he grant or denial of a writ of preliminary injunction in a pending case rests in the sound discretion of the court taking cognizance of the case since the assessment and evaluation of evidence towards that end involve findings of facts left to the said court for its conclusive determination.<sup>81</sup>

The court's discretion is not interfered with unless there is a showing that the grant or denial was tainted with grave abuse of discretion.<sup>82</sup>

The trial court, in the exercise of its discretion, denied petitioner's application for the issuance of a temporary restraining order and writ of preliminary injunction on the ground that petitioner would still have sufficient relief in its prayer for damages in its Complaint.<sup>83</sup> In the event that the annotations on petitioner's title are found by the trial court to be invalid, petitioner would have adequate relief in the removal of the annotations and in the award of damages. Therefore, the trial court acted within the bounds of its discretion.

**WHEREFORE**, the Petition is **DENIED**.

**SO ORDERED.**

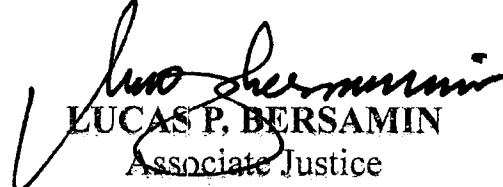


MARVIC M.V.F. LEONEN  
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.  
Associate Justice  
Chairperson



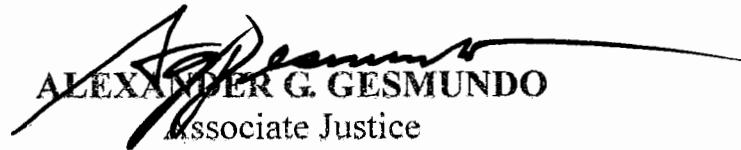
LUCAS P. BERSAMIN  
Associate Justice

On official leave  
**SAMUEL R. MARTIRES**  
Associate Justice

<sup>81</sup> *Cortez-Estrada v. Heirs of Samut*, 491 Phil. 458, 473–474 (2005) [Per J. Carpio Morales, Third Division] citing *S & A Gaisano Incorporated v. Hidalgo*, 270 Phil. 314 (1990) [Per J. Bidin, Third Division] and *Bustamante v. Court of Appeals*, 430 Phil. 797 (2002) [Per J. Carpio, Third Division].

<sup>82</sup> See *Cortez-Estrada v. Heirs of Samut*, 491 Phil. 458, 474 (2005) [Per J. Carpio Morales, Third Division] citing *Urbanes, Jr. v. Court of Appeals*, 407 Phil. 856 (2001) [Per J. Ynares-Santiago, First Division] and *GSIS v. Florendo*, 258 Phil. 694 (1989) [Per J. Medialdea, First Division].

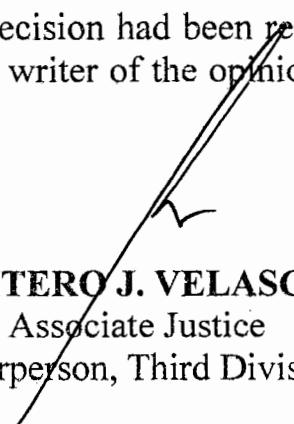
<sup>83</sup> *Rollo*, pp. 32–33.



ALEXANDER G. GESMUNDO  
Associate Justice

### ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



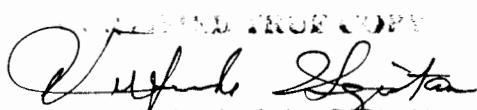
PRESBITERO J. VELASCO, JR.  
Associate Justice  
Chairperson, Third Division

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO  
Chief Justice

TRUE COPY  
  
NICANOR V. LAPITAN  
Division Clerk of Court  
Third Division

JULY 9 4 2016