

## THIRD DIVISION

[ G.R. NO. 164459, April 24, 2007 ]

**LIMITLESS POTENTIALS, INC., PETITIONER, VS. HON. COURT OF APPEALS, CRISOSTOMO YALUNG, AND ATTY. ROY MANUEL VILLASOR, RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to annul and set aside: (1) The Decision,<sup>[1]</sup> dated 16 September 2003, of the Court of Appeals in CA-G.R. SP No. 73463 entitled, *Limitless Potentials, Inc. vs. Hon. Manuel D. Victorio, in his capacity as the Presiding Judge of the Regional Trial Court of Makati City, Branch 141, Crisostomo Yalung, and Atty. Roy Manuel Villasor*, which dismissed herein petitioner's Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure for lack of merit, and (2) The Resolution,<sup>[2]</sup> dated 8 July 2004, of the appellate court in the same case which denied petitioner's Motion for Reconsideration because the issues and arguments raised therein had already been passed upon and judiciously resolved in the Decision dated 16 September 2003.

The controversy of this case stemmed from the following facts:

On 12 October 1995, Digital Networks Communications and Computers, Inc. (Digital) and herein petitioner Limitless Potentials, Inc. (LPI), a domestic corporation duly organized and existing under Philippine laws, entered into a Billboard Advertisement Contract whereby petitioner was to construct one billboard advertisement for Digital's product for a period of one year, with an agreed rental of P60,000.00 per month plus Value Added Tax (VAT). It was agreed, among other things, that Digital will make a three-month deposit in the following manner, to wit: (a) P60,000.00 plus VAT upon the signing of the contract, and (b) P120,000.00 plus VAT upon completion of the billboard. Digital complied with the aforesaid agreement.

The billboard, however, was destroyed by unknown persons. In view thereof, the contract between Digital and the petitioner was considered terminated. Digital demanded for the return of their rental deposit for two months, but the petitioner refused to do so claiming that the loss of the billboard was due to *force majeure* and that any cause of action should be directed against the responsible persons. Thus, on 18 April 1997, Digital commenced a suit against herein petitioner before the Metropolitan Trial Court (MeTC) of Makati City, Branch 66, presided over by then Judge Estela Perlas-Bernabe (Judge Perlas-Bernabe)<sup>[3]</sup>, for the return of Digital's deposit, which was equivalent to two months rental inclusive of VAT and attorney's fees. The case was docketed as Civil Case No. 55170.

On 18 June 1997, consistent with its defense against Digital's Complaint, petitioner filed a Third-Party Complaint<sup>[4]</sup> against Macgraphics Carranz International Corporation (Macgraphics) and herein private respondents Bishop Crisostomo Yalung (Bishop Yalung) and Atty. Roy Manuel Villasor (Atty. Villasor) alleging that it had entered into a contract of lease with Roman Catholic Archbishop of Manila (RCAM), as represented by the private respondents, over a space inside San Carlos Manor Seminary in Guadalupe Viejo, Makati City, where petitioner erected the subject billboard. Petitioner further averred that despite its full compliance with the terms and conditions of the lease contract, herein private respondents, together with their cohorts, maliciously dismantled and destroyed the subject billboard and prevented its men from reconstructing it. Thereafter, petitioner learned that Macgraphics had "cajoled and induced" RCAM, through the private respondents, to destroy the subject billboard to enable Macgraphics to erect its own billboard and advertising signs. Thus, by way of affirmative defenses, petitioner claimed that: (a) the destruction of the subject billboard was not of its own making and beyond its control, and (b) Digital's cause of action, if any, should be directed against the private respondents and Macgraphics. Hence, petitioner prayed that judgment be rendered in its favor and to hold private respondents liable for the following: (a) moral damages in the amount of P1,000,000.00; (b) exemplary, temperate and nominal damages amounting to P300,000.00; (c) P300,000.00 as attorney's fees; (d) P50,000.00 as litigation expenses; and (e) costs of suit, allegedly suffered or incurred by it because of the willful destruction of the billboard by the private respondents.

In response, private respondents filed a Motion to Dismiss the aforesaid Third-Party Complaint based on the following grounds: (1) *litis pendentia*; (2) lack of cause of action; (3) forum shopping; and (4) lack of privity of contract. The MeTC, in an Order dated 25 August 1997,<sup>[5]</sup> denied the said Motion to Dismiss. Petitioner filed an Amended Third-Party Complaint. Again, private respondents filed a Motion to Dismiss Amended Third-Party Complaint. However, the MeTC also denied the Motion to Dismiss Amended Third-Party Complaint in an Order dated 10 October 1997.<sup>[6]</sup>

On 9 December 1997, private respondents filed a Petition for *Certiorari* with Prayer for Preliminary Restraining Order and/or Writ of Preliminary Injunction before the Regional Trial Court (RTC) of Makati City, assailing the Orders dated 25 August 1997 and 10 October 1997 of the MeTC of Makati City denying their Motion to Dismiss Third-Party Complaint and Motion to Dismiss Amended Third-Party Complaint, respectively, in Civil Case No. 55170.

The RTC issued an Order on 6 February 1998,<sup>[7]</sup> granting private respondents' prayer for a writ of preliminary injunction, conditioned upon the posting of an injunction bond in the amount of P10,000.00. Thus, the MeTC was enjoined from hearing the Third-Party Complaint in Civil Case No. 55170. The pertinent portion of the aforesaid Order reads, as follows:

When the application for temporary restraining order and/or preliminary injunction was heard this afternoon, [herein petitioner] who did not file comment on the petition appeared thru counsel Emmanuel Magnaye. It was brought out to the attention of this Court that respondent judge is poised on pursuing the hearing of the case before her despite the pendency of this petition. It appeared that the case was set by

respondent judge for hearing *ex-parte* for the reception of [herein petitioner's] evidence on 23 February 1998. It also appeared that [herein private respondents] were declared in default despite the fact that they have filed their answer and the motion to lift such order of default and for admission of the answer was denied by respondent judge.

Upon consideration of the allegations in the petition and the oral manifestations and admissions of both parties, this Court hereby resolves to issue the writ of preliminary injunction in order to preserve the *status quo* as well as not to render the issue herein raised moot and academic.

WHEREFORE, the motion for preliminary injunction is granted. Accordingly, upon the filing by [herein private respondents] of a bond in the amount of P10,000.00, let a writ of preliminary injunction be issued, enjoining respondent judge, or her successor, from hearing the [T]hird [P]arty [C]omplaint against [herein private respondents] in Civil Case No. 55170 until further orders from this Court.<sup>[8]</sup>

Subsequently, however, the RTC rendered a Decision<sup>[9]</sup> on 28 April 2000, dismissing the Petition for *Certiorari* filed by private respondents, the dispositive portion of which reads:

WHEREFORE, the petition is hereby dismissed for lack of merit. The preliminary injunction issued by this Court on 6 February 2000<sup>[10]</sup> (sic) is hereby dissolved.

Costs against [herein private respondents].<sup>[11]</sup>

Disgruntled, private respondents filed an Urgent Motion for Reconsideration, which was denied by the RTC in its Order<sup>[12]</sup> dated 26 June 2000.

Petitioner filed its Motion for Judgment Against the Bond, and in compliance with the directive of the RTC, the petitioner filed a pleading<sup>[13]</sup> specifying its claims, thus: (a) attorney's fees in the sum of P74, 375.00; and (b) moral damages for the tarnished good will in the sum of P1,000,000.00.

The RTC, in its Order dated 3 April 2002,<sup>[14]</sup> denied petitioner's Motion for Judgment Against the Bond declaring that the preliminary injunction was not wrongfully obtained; therefore, the claim for damages on the bond is untenable.

Aggrieved, the petitioner moved for the reconsideration of the aforesaid Order, which was also denied by the RTC in its Order dated 6 August 2002.<sup>[15]</sup>

Dissatisfied, the petitioner filed a Petition for *Certiorari* under Rule 65 of the Revised Rules of Civil Procedure before the Court of Appeals assailing the Orders of the RTC dated 3 April 2002 and 6 August 2002 for having been issued with grave abuse of discretion amounting to lack and/or excess of jurisdiction.

On 6 November 2002, the Court of Appeals issued a Resolution<sup>[16]</sup> dismissing the Petition for failure to show proof that a certain Quirino B. Baterna has been duly authorized by the petitioner to file the Petition for and in its behalf. Petitioner moved

for the reconsideration of the aforesaid Resolution, which was granted by the appellate court in its Resolution dated 24 January 2003<sup>[17]</sup> thereby reinstating the Petition for *Certiorari* filed by the petitioner.

On 16 September 2003, the Court of Appeals rendered a Decision dismissing the Petition filed by the petitioner for utter lack of merit. The petitioner filed a Motion for Reconsideration based on the following grounds:

- I. The dismissal of the petition and dissolution of the injunction amount to a determination that the injunction was wrongfully or improvidently obtained.
- II. The petitioner suffered damages by reason of the issuance of the injunction.
- III. The damages claimed by the petitioner are covered by the injunction bond.

The Court of Appeals through a Resolution dated 8 July 2004, denied the petitioner's Motion for Reconsideration.

Hence, this Petition.

Petitioner pointed out two basic legal issues wherein the appellate court committed serious and reversible errors, to wit:

- I. Is malice or bad faith a condition *sine qua non* for liability to attach on the injunction bond?
- II. Are attorney's fees, litigation costs, and cost of delay by reason of the injunction covered by the injunction bond?

Petitioner argues that malice or lack of good faith is not an element of recovery on the bond. The dissolution of the injunction, even if the injunction was obtained in good faith, amounts to a determination that the injunction was wrongfully obtained and a right of action on the injunction immediately accrues to the defendant. The petitioner maintains that the attorney's fees, litigation costs, and cost of delay by reason of the injunction are proper and valid items of damages which can be claimed against the injunction bond. Hence, having proven through testimonial and documentary evidence that it suffered damages because of the issuance of the writ of injunction, and since malice or lack of good faith is not an element of recovery on the injunction bond, petitioner asserts that it can properly collect such damages on the said bond.

Private respondent Bishop Yalung on the other hand, prays for the outright dismissal of the present Petition due to the alleged failure of the petitioner to comply with the mandatory rule on proper certification on non-forum shopping under Section 5, Rule 7 of the 1997 Revised Rules of Civil Procedure. According to him, it is not sufficient for Mr. Baterna to make the undertaking that "*I have not commenced any other action or proceeding involving the same issue in the Supreme Court, etc.*" inasmuch as such undertaking should have been made by the principal party, namely, the petitioner. He underscores that the verification/disclaimer of forum shopping executed by Mr. Baterna on behalf of the petitioner is legally defective for failure to enumerate with particularity the multiple civil and criminal actions, which were filed by him and the petitioner against the private respondents.

Private respondent Bishop Yalung also avers that the petitioner is not entitled to collect damages on the injunction bond filed before the court *a quo*. Primarily, as the appellate court mentioned in its Decision, the preliminary injunction was directed not against the petitioner but against the MeTC. The petitioner was not restrained from doing any act. What was restrained was the hearing of the Third-Party Complaint while the Petition for *Certiorari* was pending, "in order to preserve the status quo and not to render the issue therein moot and academic."<sup>[18]</sup> Also, the fact that the decision is favorable to the party against whom the injunction was issued does not automatically entitle the latter to recover damages on the bond. Therefore, the petitioner cannot claim that it suffered damages because of the issuance of the writ of injunction.

Private respondent Atty. Villasor shares the same argument as that of his co-respondent Bishop Yalung that it was the MeTC which was enjoined and not herein petitioner. Private respondent Atty. Villasor further alleged that in the Special Civil Action for *Certiorari*, the action is principally against any tribunal, board, or officer exercising judicial or quasi-judicial functions who has acted without or in excess of jurisdiction or with grave abuse of discretion. Thus, private respondents' Petition for *Certiorari* before the RTC principally pertains to the MeTC and not to herein petitioner. Additionally, private respondent Atty. Villasor argues that it was petitioner who was benefited by such writ of preliminary injunction, because the injunction left Digital unable to prosecute Civil Case No. 55170 against herein petitioner. Lastly, private respondent Atty. Villasor claims that petitioner did not oppose their application for a writ of preliminary injunction at the hearing wherein petitioner was duly represented by counsel.

Simply stated, the threshold issues are:

I. Can petitioner recover damages from the injunction bond?

II. Was petitioner able to substantiate the damages?

Quite apart from the above, there appears to be another question concerning the alleged violation by the petitioner of the mandatory rule on proper certification on non-forum shopping.

In the case at bar, petitioner repeatedly argues that malice or lack of good faith is not an element of recovery on the injunction bond. In answering this issue raised by petitioner, this Court must initially establish the nature of the preliminary injunction, the purpose of the injunction bond, as well as the manner of recovering damages on the said bond.

A preliminary injunction is a provisional remedy that a party may resort to in order to preserve and protect certain rights and interests during the pendency of an action.<sup>[19]</sup> It is an order granted at any stage of an action, prior to the judgment or final order, requiring a party, court, agency or person to perform or to refrain from performing a particular act or acts. A preliminary injunction, as the term itself suggests, is *merely temporary*, subject to the final disposition of the principal action.<sup>[20]</sup> It is issued to preserve the *status quo ante*, which is the last actual, peaceful, and uncontested status that preceded the actual controversy,<sup>[21]</sup> in order to protect the rights of the plaintiff during the pendency of the suit. Otherwise, if no preliminary injunction is issued, the defendant may, before final judgment, do the