

## THIRD DIVISION

[ G.R. NO. 152238, January 28, 2005 ]

**UNITED COCONUT PLANTERS BANK, PETITIONER, VS. UNITED  
ALLOY PHILIPPINES CORPORATION, RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

An order granting a preliminary injunction, whether mandatory or prohibitory, is interlocutory and unappealable. However, it may be challenged by a petition for certiorari under Rule 65 of the Rules of Court. Being preliminary, such an order need not strictly follow Section 5 of Rule 51 requiring that "every decision or final resolution of the court in appealed cases shall clearly and distinctly state the findings of fact and conclusions of law on which it is based x x x."

### The Case

Before us is a special civil action for certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court, challenging the February 18, 2002 Resolution,<sup>[2]</sup> as amended by the April 3, 2002 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-GR SP No. 67079. The first assailed Resolution disposed as follows:

"WHEREFORE, let a writ of preliminary injunction be issued in favor of the petitioner, after posting a bond in the amount of THREE HUNDRED THOUSAND PESOS (P300,000.00) to answer for whatever damages the respondents may suffer should petition[er] be adjudged not entitled to the injunctive relief herein granted.

"Let a copy of the resolution be furnished to the counsel of the parties. The petitioner is hereby directed to file its bond within ten (10) days from receipt hereof.

"SO ORDERED."<sup>[4]</sup>

The second challenged Resolution amended the February 18, 2002 Resolution thus:

"Petitioner is hereby given ten (10) days from notice within which to submit valid certified true copies or the original copies of the documents in support of the bond. Failure on the part of the petitioner to comply herewith will result in the disapproval of the bond."<sup>[5]</sup>

### The Facts

On August 27, 2001, United Alloy Philippines Corporation (Unialloy) filed a Complaint for "annulment and/or reformation of contract and damages, with prayer

for a writ of preliminary injunction or temporary restraining order” against United Coconut Planters Bank (UCPB). The Complaint was filed before the Regional Trial Court (RTC) of **Cagayan de Oro City**, Branch 40, where it was docketed as Civil Case No. 2001-219, entitled “United Alloy Philippines Corporation v. United Coconut Planters Bank, Jakob Van der Sluis and Robert Chua.”<sup>[6]</sup> The trial court, on the same day, issued a Temporary Restraining Order (TRO).<sup>[7]</sup>

On the same day, August 27, 2001, UCPB filed a Complaint for a sum of money with an application for preliminary attachment against Unialloy. This Complaint was filed before the RTC of **Makati City**, where it was docketed as Civil Case No. 01-1332, entitled “United Coconut Planters Bank v. United Alloy Philippines Corporation, et al.”<sup>[8]</sup>

Thereafter, UCPB moved to dismiss the Complaint before the **Cagayan de Oro City** RTC on the grounds of improper venue, forum shopping, *litis pendentia*, and being a harassment or nuisance suit.

On September 13, 2001, the RTC of Cagayan de Oro City dismissed Unialloy’s Complaint in this wise:

“ACCORDINGLY, finding meritorious that the venue is improperly laid and the [private respondent] engaged in forum shopping and harassment of defendant Jakob Van der Sluis, this case is hereby DISMISSED rendering the prayer for issuance of a writ of preliminary injunction moot and academic, and ordering [private respondent] to turn over possession of the subject premises of the properties in question at Barangay Gracia, Tagoloan, Misamis Oriental to [petitioner] United Coconut Planters Bank.”<sup>[9]</sup>

On September 14, 2001, by virtue of a Motion for Immediate Execution filed by UCPB, the same court issued an Order of Execution for the turnover to the bank of the property, subject of the Contract sought to be annulled or reformed.<sup>[10]</sup>

On October 9, 2001, Unialloy filed a Petition for Certiorari and Mandamus before the Court of Appeals.<sup>[11]</sup> On February 18, 2002, the CA issued a Writ of Preliminary Injunction in favor of the corporation, worded as follows:

“On October 18, 2001, this Court issued a [Resolution<sup>[12]</sup>] and set the above-entitled case for the hearing on the issuance of a Writ of Preliminary Injunction.

“During the said hearing, both parties represented by counsel, argued their respective positions on the matter.

“A perusal of the record and the arguments raised during the hearing pose a peculiar issue in the instant case. As such, this court cannot resolve the petition immediately without an ample time to judiciously study the stand of both parties, and to prevent the other parties from taking over the property by force without any clear adjudication by this court who is the rightful possessor/owner[. T]his Court, resolves to GRANT the prayer for preliminary injunction after finding the same to be meritorious. Further, this Court so opines that the non-issuance of

preliminary injunction would render the [petition] moot and academic.”  
[13]

As earlier stated, this issuance was later amended by the second challenged Resolution of April 3, 2002.

Hence, this Petition.[14]

### **The Issues**

In its Memorandum,[15] petitioner raises the following issues for our consideration:

“Whether or not the respondent Court of Appeals committed grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing the questioned resolution.”[16]

Petitioner further dissected this issue as follows:

“Can the Honorable Court of Appeals entertain a petition filed out of time or stated otherwise, does the Honorable Court of Appeals have jurisdiction to entertain a petition which was filed as a substitute for a lost appeal?

“Can the Honorable Court of Appeals or any court for that matter grant the serious relief of *Preliminary Mandatory Injunction* without defining the rights of the pleader why he is entitled to such relief?”[17]

Simply stated, these are the issues: (1) whether it was proper for the Court of Appeals to take cognizance of the Petition for Certiorari; and (2) whether the CA Resolution granting the preliminary mandatory injunction was sufficient in form.

### **This Court’s Ruling**

The Petition has no merit.

#### **First Issue:** **Special Civil Action Under Rule 65**

Petitioner contends that the CA did not have jurisdiction to entertain Unialloy’s Petition, which had allegedly been filed after the lapse of 15 days from receipt by respondent of the September 13, 2001 RTC Order dismissing the Complaint. UCPB further contends that, although Unialloy falsely stated the date of receipt as September 25, 2001, the Order was actually served by personal service upon the latter’s collaborating counsel, Atty. Armando Kho, on September 13, 2001.

As evidence of respondent’s receipt of the Order, petitioner presents the process server’s Return, as well as a Certification issued by the clerk of court of the RTC. UCPB argues that the service was valid, because notice to any one of several lawyers of a party litigant is sufficient to bind that party.[18] The Certificate issued by the corporate secretary of Unialloy supposedly attests to the fact that, a day before its alleged date of receipt of a copy of the assailed Order, its directors held a meeting that would authorize appeal of the case. This fact purportedly evinced its

awareness that a Decision had been rendered.<sup>[19]</sup> The CA allegedly failed to address this issue in its assailed Resolution.<sup>[20]</sup>

Petitioner's arguments are off-tangent, because they focus on the **September 13, 2001 RTC Order of dismissal** and the failure of respondent to appeal the Order. Clearly, however, the Petition before us plainly seeks to annul and set aside the February 18, 2002 CA Resolution, which does not address the September 13, 2001 Order. The records show that the assailed Resolution merely pertained to the **September 14, 2001 RTC Order of Execution and the Writ of Execution** itself.

The dismissal of Civil Case No. 2001-219 on the grounds of forum shopping, improper venue and harassment -- although raised, too, by Unialloy in its Petition<sup>[21]</sup> before the Court of Appeals -- was not passed upon in the assailed interlocutory CA Resolution. As a consequence, it would be premature and improper for us to pass upon the RTC's dismissal of the case. Hence, we shall limit our discussion to the assailed Resolutions temporarily stopping the trial court's turnover of the litigated property to petitioner.

Rule 65 of the Rules of Court provides as follows:

Section 1. *Petition for certiorari.* - "When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, **and there is no appeal**, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis supplied)

On the other hand, Section 1(f) of Rule 41<sup>[22]</sup> of the Rules unequivocally states that no appeal may be taken from an order of execution. Rule 41 adds that in instances in which an order is not appealable, the aggrieved party's recourse is a special civil action under Rule 65. Hence, an order of execution, when issued with grave abuse of discretion amounting to lack or excess of jurisdiction, may be the subject of a petition for certiorari under Rule 65.<sup>[23]</sup>

Respondent's Petition for Certiorari before the CA assailed the September 14, 2001 RTC Order of Execution, as well as the Writ of Execution issued pursuant thereto. Thus, the appellate court was correct in taking cognizance of the Petition.

### **Second Issue:** **Sufficiency of the Resolution's Form**

Petitioner finally argues that the assailed Resolution did not state the complete facts and the law upon which the injunction was based. The CA also supposedly failed to state whether it had issued a prohibitive or a mandatory injunction and to give an explanation for the issuance thereof.<sup>[24]</sup> Neither did it state the specific act it sought to be performed.<sup>[25]</sup> Nor did it clearly ascertain the rights of the parties first before granting the injunction.<sup>[26]</sup> Furthermore, assuming that the CA issued a preliminary

mandatory injunction, petitioner argues -- on the basis of the Resolution -- that the former did so without first determining whether the requisites for such issuance, as provided in *Pelejo v. CA*,<sup>[27]</sup> had been met.

Upon the other hand, respondent argues that there was no need to detail the rights of the parties as well as the legal basis therefor, because these matters were already stated in its Petition for Certiorari. Thus, it contends that repeating them in the Resolution was unnecessary.<sup>[28]</sup>

We rule for respondent.

The grant or denial of a prayer for preliminary injunction lies in the sound discretion of the issuing court.<sup>[29]</sup> It is not intended to correct a wrong done in the past, in the sense of redress for injury already sustained, but to prevent further injury.<sup>[30]</sup> The purpose of a preliminary injunction was clearly discussed in *Capitol Medical Center v. Court of Appeals*,<sup>[31]</sup> from which we quote:

"The sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard. The status quo is the last actual peaceable uncontested status which preceded the controversy (*Rodulfa vs. Alfonso*, 76 Phil. 225). It may only be resorted to by a litigant for the preservation or protection of his rights or interests and for no other purpose during the pendency of the principal action (*Calo vs. Roldan*, 76 Phil. 445). It should only be granted if the party asking for it is clearly entitled thereto (*Climaco vs. Macaraeg*, 4 SCRA 930; *Subido vs. Gopengco*, 27 SCRA 455; *Police Commission vs. Bello*, 37 SCRA 230)."<sup>[32]</sup> (Underscoring supplied)

Both parties were given the opportunity to present evidence to support their respective claims. Nevertheless, the court's determination of what the status quo was, if proved to be wrong or inaccurate in the course of the trial on the main case, would entitle respondent to proceed against the bond posted by petitioner for any damages the former might have suffered as a result of the issuance of the injunction. There has been no showing that UCPB would suffer damages that cannot be compensated by the bond.

We shall now take up petitioner's contention that the Resolution is void for failing to state clearly and distinctly the facts and the law on which it was based. Section 5 of Rule 51 of the Rules of Court<sup>[33]</sup> refers to decisions and final resolutions of the courts. Au contraire, the Resolution issued below was merely interlocutory, not a final resolution or decision disposing of the case. It was based on a preliminary determination of the status quo and petitioner's entitlement to the Writ.

The evidence submitted during the hearing on the application for a preliminary injunction was neither conclusive nor complete; only a "sampling" thereof was needed to give the trial court a fair idea of the justification for the preliminary injunction, pending a decision on the merits of the case.<sup>[34]</sup> After a hearing on an application for a writ of preliminary injunction, the findings of fact and the opinions of a court have an interlocutory nature, and vital facts that may not have been presented may yet be presented during the trial. Thus, the Rules as regards the form of decisions are not applicable to that of resolutions disposing of applications