

THIRD DIVISION

[G.R. No. 207938, October 11, 2017]

**EVY CONSTRUCTION AND DEVELOPMENT CORPORATION,
PETITIONER, V. VALIANT ROLL FORMING SALES CORPORATION,
RESPONDENT.**

D E C I S I O N

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^[1] assailing the October 22, 2012 Decision^[2] and June 25, 2013 Resolution^[3] of the Court of Appeals in 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.^[4]

On September 18, 2007, the Register of Deeds annotated a Notice of Levy on Attachment on TCT No. 134890.^[5] 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*.^[6] Two (2) other encumbrances were also annotated on the title.^[7]

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.^[8]

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.^[9]

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.^[10] Valiant posted an Indemnity Bond of P745,700.00 to answer for any damages that Evy Construction may suffer should execution of the Regional Trial Court Decision proceed.^[11]

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.^[12] A Certificate of Sale was eventually issued to Valiant as the winning bidder of the property covered by TCT No. 134890.^[13]

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.^[14]

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.^[15]

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."^[16]

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.^[17] Hence, it filed a Petition for Certiorari^[18] with the Court of Appeals.

On October 22, 2012, the Court of Appeals rendered its Decision.^[19] 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.^[20]

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.^[21]

Evy Construction filed a Motion for Reconsideration, which was denied by the Court of Appeals in its Resolution^[22] dated June 25, 2013. Hence, this Petition^[23] 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.^[24] 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."^[25] 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.^[26]

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."^[27] It insists that respondent's indemnity bond in the amount of P745,700.00 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 confidence in the project or in petitioner's competence and reputation as a property developer.^[28]

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.^[29] 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.^[30] Respondent likewise reiterates the Court of Appeals' finding that petitioner already touches on the merits of its Complaint before the trial court, which effectively prejudices the case.^[31]

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."^[32] It may be filed as a main

action before the trial court^[33] or as a provisional remedy in the main action.^[34] *Bacolod City Water District v. Hon. Labayan*^[35] 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 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.^[36]

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]."^[37]

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*."^[38] 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."^[39] 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.^[40]

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."^[41] 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.^[42] Notably, the Rules do not require that a hearing on the application for preliminary injunction be conducted during this period.

While Rule 58, Section 4(d)^[43] 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."^[44] Petitioner's counsel was allowed to present its arguments^[45] and its witness^[46] but

conceded that the issues before the trial court were legal in nature.^[47] 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.^[48]

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 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."^[49] It is an ancillary relief granted by the court where the main action or proceeding is pending.^[50]

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