

FIRST DIVISION

[G.R. No. 215764, July 06, 2015]

**RICHARD K. TOM, PETITIONER, VS. SAMUEL N. RODRIGUEZ,
RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Resolutions of the Court of Appeals (CA) dated May 16, 2014^[2] and November 5, 2014,^[3] in CA-G.R. SP No. 06075, which denied the prayer for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction sought for by petitioner Richard K. Tom (Tom) in his petition for *certiorari* filed before the CA.

The Facts

Golden Dragon International Terminals, Inc. (GDITI) is the exclusive Shore Reception Facility (SRF) Service Provider of the Philippine Ports Authority (PPA) tasked to collect, treat, and dispose of all ship-generated oil wastes in all bases and private ports under the PPA's jurisdiction.^[4]

Records show that sometime in December 2008, Fidel Cu (Cu) sold *via* Deed of Conditional Sale his 17,237 shares of stock in GDITI to Virgilio S. Ramos (Ramos) and Cirilo C. Basalo, Jr. (Basalo).^[5] When the latter failed to pay the purchase price, Cu sold 15,233 of the same shares through a Deed of Sale in favor of Edgar D. Lim (Lim), Eddie C. Ong (Ong), and Arnold Gunnacao (Gunnacao), who also did not pay the consideration therefor.^[6]

On September 11, 2009, the following were elected as officers of GDITI: Lim as President and Chairman of the Board, Basalo as Vice President for Visayas and Mindanao, Ong as Treasurer and Vice President for Luzon, and Gunnacao as Director, among others.^[7] However, a group^[8] led by Ramos composed of individuals who were not elected as officers of GDITI – which included Tom – forcibly took over the GDITI offices and performed the functions of its officers. This prompted GDITI, through its duly-elected Chairman and President, Lim, to file an action for injunction and damages against Ramos, *et al.*, before the Regional Trial Court of Manila, Branch 46 (RTC-Manila), docketed as Civil Case No. 09-122149 (injunction case).^[9]

Pending the injunction case, Cu resold his shares of stock in GDITI to Basalo for a consideration of P60,000,000.00, as evidenced by an Agreement^[10] dated April 30, 2010 (April 30, 2010 Agreement). Under the said agreement, Cu sold not only his remaining 1,997 shares of stock in GDITI, but also the shares of stock subject of the previously-executed Deed of Conditional Sale in favor of Ramos, as well as the Deed of Sale in favor of Lim, Ong, and Gunnacao, where the respective considerations

were not paid.^[11] As such, Cu intervened in the injunction case claiming that, as an unpaid seller, he was still the legal owner of the shares of stock subject of the previous contracts he entered into with Ramos, Lim, Ong, and Gunnacao.^[12] In an Order^[13] dated October 11, 2010, the RTC-Manila granted Cu's application for Preliminary Mandatory and Preliminary Prohibitory Injunctions, and thereafter issued corresponding writs therefor on October 20, 2010,^[14] which, *inter alia*, directed the original parties (plaintiff Lim and those acting under his authority, and defendants Ramos, *et al.*) to cease and desist from performing or causing the performance of any and all acts of management and control over GDITI, and to give Cu, as intervenor, the authority to put in order GDITI's business operations.^[15]

In view of his successful intervention in the injunction case, Cu executed a Special Power of Attorney^[16] (SPA) dated October 18, 2010 in favor of Cezar O. Mancao II (Mancao) constituting the latter as his duly authorized representative to exercise the powers granted to him in the October 11, 2010 Order, and to perform all acts of management and control over GDITI. Thereafter, Cu and Basalo entered into an Addendum to Agreement^[17] (Addendum) setting forth the terms of payment of the sale of the shares of stock subject of the April 30, 2010 Agreement.

However, in a letter^[18] dated September 5, 2011 addressed to Mancao, Basalo, and the Board of Directors of GDITI filed before the RTC-Manila, Cu expressly revoked the authority that he had previously granted to Mancao and Basalo under the SPA and other related documents, effectively reinstating the power to control and manage the affairs of GDITI unto himself.^[19] Thus, Mancao and Basalo filed the present Complaint for Specific Performance with Prayer for the Issuance of a Temporary Restraining Order (TRO) and a Writ of Preliminary Injunction^[20] against Cu, Tom, and several John and Jane Does before the Regional Trial Court of Nabunturan, Compostela Valley, Branch 3 (RTC-Nabunturan), docketed as Civil Case No. 1043 (specific performance case). The complaint impleaded Tom on the allegation that Cu had authorized him to exercise control and management over GDITI and, on the strength thereof, had made representations before the PPA that enabled him to enter the ports in a certain region, to the exclusion of the other agents of GDITI.^[21] Thus, the complaint prayed that: (a) a TRO be issued *ex parte* enjoining Cu, Tom and all persons acting for and under Cu's authority from exercising control and management over GDITI and/or interfering with Mancao and Basalo's affairs; (b) after hearing, a writ of preliminary injunction be issued; and (c) judgment be rendered ordering Cu to faithfully comply with his obligations under the agreements he executed with them.^[22]

Thereafter, herein respondent Samuel N. Rodriguez (Rodriguez) filed a Complaint-in-Intervention,^[23] alleging that in a Memorandum of Agreement^[24] (MOA) dated May 2, 2012, Basalo authorized him to take over, manage, and control the operations of GDITI in the Luzon area, and, in such regard, effectively revoked whatever powers Basalo had previously given to Mancao. In the said MOA, Basalo and Rodriguez agreed to divide between them the monthly net profit of GDITI equally. However, as Basalo purportedly refused to honor the terms and conditions of the MOA despite demand,^[25] Rodriguez sought to intervene in the specific performance case to compel Basalo to faithfully comply with his undertaking. Likewise, Rodriguez prayed for the issuance of a writ of preliminary injunction

directing Basalo, his agents, deputies, and successors, and all other persons acting for and on his behalf, to honor his obligations under the MOA by: (a) giving the management and control of GDITI in the Luzon area to Rodriguez; (b) allocating the power to administer and manage the Visayas and Mindanao regions of GDITI to Rodriguez in the concept of a partner; (c) granting to Rodriguez the right to provide the manpower services for the operations of GDITI; and (d) giving to Rodriguez his share in the net proceeds of GDITI. Finally, he prayed that after trial, such injunction be made permanent.^[26]

Basalo failed to present any evidence to contradict Rodriguez's allegations, despite having been given the opportunity to do so.^[27]

The RTC-Nabunturan Ruling

In an Order^[28] dated November 13, 2013, the RTC-Nabunturan granted Rodriguez's application for the issuance of a writ of preliminary mandatory injunction, conditioned on the filing of a bond in the amount of P1,000,000.00. It found credence in the MOA executed between him and Basalo which remained uncontroverted.^[29] Accordingly, the RTC-Nabunturan ordered Basalo to: (a) place the management and control of GDITI in Luzon to Rodriguez as representative of Basalo; (b) allocate the power to administer and manage the Visayas and Mindanao regions of GDITI to Rodriguez in the concept of a partner of Basalo; (c) allow Rodriguez to provide the manpower services for the operations of GDITI; and (d) give to Rodriguez his share in the monthly net proceeds from GDITI's operations, subject to the rules of the corporation on fees relative to the management contracts.^[30]

The original parties, plaintiffs Basalo and Mancao, and defendant Tom, separately filed motions for reconsideration thereof, which were denied in an Order^[31] dated December 11, 2013. Aggrieved, Tom elevated the matter before the CA via petition for *certiorari* with prayer for the issuance of a TRO and/or writ of preliminary injunction,^[32] docketed as CA-G.R. SP No. 06075, seeking to nullify the November 13, 2013 and December 11, 2013 Orders of the RTC-Nabunturan in the specific performance case.^[33]

The CA Ruling

In a Resolution^[34] dated May 16, 2014, the CA, without touching upon the merits of the case, denied Tom's prayer for the issuance of a TRO and/or writ of preliminary injunction, finding no extreme urgency on the matter raised by Tom, and that no clear and irreparable injury would be suffered if the injunctive writ was not granted.^[35]

Dissatisfied, Tom filed a motion for reconsideration,^[36] but was denied in a Resolution^[37] dated November 5, 2014; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA committed grave abuse of discretion in denying Tom's prayer for the issuance of a TRO and/or writ of

preliminary injunction.

The Court's Ruling

The petition is meritorious.

At the outset, it is observed that Tom has erroneously invoked the Court's appellate jurisdiction under Rule 45 of the Rules of Court in assailing the CA's Resolutions denying his prayer for injunctive relief. Considering that the assailed CA Resolutions merely disposed of Tom's prayer for the issuance of a TRO and/or writ of preliminary injunction – hence, interlocutory orders – the proper remedy should have been to file a petition for *certiorari*, not a petition for review,^[38] before this Court. On this score, therefore, the instant petition would have been dismissible outright.

However, in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, as justified by the merits of the petition, which was filed^[39] within the 60-day reglementary period under Rule 65 of the Rules of Court, and alleged that the CA “departed from the accepted and usual course of judicial proceedings,”^[40] the Court deems it proper to treat Tom's petition for review on *certiorari* as a petition for *certiorari*^[41] and, thus, proceeds to determine whether the CA gravely abused its discretion in denying Tom's prayer for the issuance of a TRO and/or writ of preliminary injunction.

As traditionally described, grave abuse of discretion refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. In *Yu v. Reyes-Carpio*,^[42] the Court explained that:

The term “grave abuse of discretion” has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a “capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.” The abuse of discretion must be so patent and gross as to amount to an “evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.” Furthermore, the use of a petition for *certiorari* is restricted only to “truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void.”^[43]

As the existence of grave abuse of discretion in this case relates to the propriety of issuing a TRO and/or writ of preliminary injunction, which, by nature, are injunctive reliefs and preservative remedies for the protection of substantive rights and interests, it is important to lay down the issuance's requisites, namely: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.^[44] Case law holds that the issuance of an injunctive writ rests upon the sound discretion of the court that took cognizance of the case; as such, the exercise of judicial discretion by a court in injunctive matters