

SECOND DIVISION

[G.R. No. 176898, December 03, 2012]

**GEORGE S. H. SY, DOING BUSINESS UNDER THE NAME AND
STYLE OF OPM INTERNATIONAL CORPORATION, PETITIONER,
VS. AUTOBUS TRANSPORT SYSTEMS, INC., RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

A writ of preliminary mandatory injunction will not be set aside unless it was issued with grave abuse of discretion.

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assails the Decision^[2] dated September 21, 2006 and the Resolution^[3] dated March 6, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 90926.

Factual Antecedents

Petitioner George S. H. Sy is doing business under the name and style of OPM International Corporation (OPM), which is engaged in the sale and installation of bus air conditioning units.^[4]

Sometime in July 1996, petitioner entered into a verbal agreement with respondent Autobus Transport Systems, Inc.,^[5] a public utility bus company plying the northern Luzon routes from Manila.^[6] Under their agreement, respondent would purchase Konvecta air conditioning units from petitioner and petitioner would finance respondent's acquisition of twenty-two (22) units of bus engine and chassis from Commercial Motors Corporation (CMC) and twenty-two (22) bus deluxe bodies to be built by Almazora Motors Corporation (AMC).^[7] The parties agreed that respondent would amortize the payments for the Konvecta air conditioning units and the bus units separately;^[8] that petitioner would settle respondent's account with CMC starting on the fourteenth (14th) month from the time of the first delivery of the bus engines and chassis; and that respondent would pay petitioner the acquisition cost of the 22 units of bus engines and chassis in 36 monthly installments, starting on the fifteenth (15th) month from the time of the first delivery of the bus engines and chassis.^[9] As security, respondent would execute Chattel Mortgages over the buses in favor of CMC.^[10] Once petitioner has fully paid the amortizations to CMC, respondent would execute new Chattel Mortgages over the buses, this time, in favor of petitioner.^[11] In the meantime, respondent would deliver to petitioner titles to five properties in Caloocan City registered under the name of Gregorio Araneta III, the chairman of respondent, as security for petitioner's advances to CMC.^[12]

The 22 bus units were delivered to respondent by CMC in three batches: 10 in

November 1996, five in March 1997 and seven in October 1997.^[13] After the delivery of the first batch, respondent delivered to petitioner Transfer Certificates of Title (TCT) Nos. 292199, 292200, 292201, 292202, and 292203.^[14]

Petitioner, however, defaulted in paying the amortizations to CMC, forcing the latter to demand payment from respondent.^[15] Consequently, respondent was compelled to pay some of the obligations directly to CMC.^[16]

On November 26, 1998, respondent, through counsel, issued a letter to petitioner demanding that he settle the obligations with CMC or return the five titles to respondent.^[17]

On December 5, 1998, petitioner, in a letter, apologized for the delay and requested for an extension until January 31, 1999 to settle respondent's obligations with CMC.^[18]

On January 28, 1999, respondent, through counsel, again sent a letter to petitioner reminding him of his promise to settle the obligations by January 31, 1999.^[19]

On the same date, petitioner, thru a letter, asked respondent for another extension of 10 days or until February 10, 1999.^[20]

On March 12, 1999, due to the failure of petitioner to settle the obligations with CMC, respondent filed a complaint for Specific Performance^[21] against petitioner.^[22] The case was docketed as Civil Case No. 99-93127 and raffled to Branch 45 of the Regional Trial Court (RTC) of Manila. Respondent prayed that a decision be rendered:

1. Ordering [petitioner] to perform all his obligations under the verbal agreement by way of paying the balance of [respondent's] loan to CMC;
2. Ordering [petitioner] to return to [respondent] the mortgaged five (5) Transfer Certificates of Title Nos. 292199, 292200, 292201, 292202 and 292203;
3. Ordering [petitioner] to pay [respondent] attorney's fees amounting to P50,000.00 plus P2,000.00 per hearing attended and pleadings submitted in Court.^[23]

In his Answer,^[24] petitioner interposed the defense of lack of cause of action, contending that respondent has no right to institute the present action because the controversy is between petitioner and CMC.^[25] Petitioner also alleged that he failed to settle respondent's obligations with CMC because respondent stopped paying its amortizations.^[26] Thus, petitioner prayed that respondent be ordered to pay the amount of P56,000,000.00, representing respondent's alleged unpaid balance for the entire transaction.^[27]

On the scheduled pre-trial, petitioner and his counsel failed to appear, prompting the RTC to declare petitioner in default.^[28] Upon petitioner's motion,^[29] the RTC reconsidered the order of default.^[30]

On the next scheduled pre-trial, petitioner and his counsel again failed to appear.^[31] Thus, petitioner was declared in default and respondent was allowed to present its evidence ex-parte.^[32]

On May 16, 2000, the RTC rendered a Decision^[33] in favor of respondent, to wit:

WHEREFORE, and as prayed for by [respondent], judgment is hereby rendered for the [respondent], as follows:

- 1) ordering the [petitioner] to perform all his obligations under the verbal agreement by way of paying the balance of [respondent's] loan to CMC;
- 2) ordering [petitioner] to return to [respondent] the five (5) Transfer Certificates of Title Nos. 292199, 292200, 292201, 292202, and 29203;
- 3) ordering [petitioner] to pay [respondent] reasonable attorney's fees in the reduced amount of P20,000.00, plus the costs of suit.

The counterclaim of the [petitioner] is dismissed for lack of bases and merit.

SO ORDERED.^[34]

Feeling aggrieved, petitioner filed a Petition for Relief from Judgment^[35] citing the death of his counsel as excusable negligence.^[36] Finding the petition meritorious, the RTC set aside its Decision and set the case for trial.^[37]

On September 16, 2004, respondent filed a Motion to Order [Petitioner] to Return the Five (5) Transfer Certificates of Title to [Respondent].^[38] The RTC denied the motion in an Order^[39] dated December 9, 2004.

On January 11, 2005, respondent filed a Motion for the Issuance of a Writ of Preliminary Mandatory Injunction,^[40] praying for the issuance of a Writ of Preliminary Mandatory Injunction commanding petitioner to return to respondent the five titles.^[41]

Ruling of the Regional Trial Court

On April 11, 2005, the RTC issued an Order^[42] granting respondent's Motion. The

RTC ordered petitioner to return the five titles to respondent since he failed to comply with the agreement he made with respondent, i.e. to finance respondent's obligations with CMC.^[43] In granting the Motion, the RTC took into consideration respondent's fear that petitioner might use these titles to obtain a loan from Metrobank given that petitioner already admitted that he turned over the possession of the five titles to the said bank.^[44] Thus:

Wherefore, premises considered, and upon the posting by [respondent] of a bond in the amount of TWO MILLION (P2,000,000.00) PESOS to be approved by this Court, to answer all the damages and costs which the [petitioner] may suffer by reason of the injunction, if the Court will finally decide that the [respondent] was not entitled thereto, let a writ of preliminary mandatory injunction be issued commanding the [petitioner] to return to the [respondent] the five (5) Transfer Certificates of Title Nos. 292199, 292200, 292201, 292202 and 292203.

SO ORDERED.^[45]

Petitioner filed a Motion for Reconsideration with Motion to Post Counter bond^[46] but the RTC denied the same in its Order ^[47] dated July 26, 2005.

This prompted petitioner to elevate the case to the CA via a Petition for *Certiorari*,^[48] imputing grave abuse of discretion on the part of the RTC in issuing the Writ of Preliminary Mandatory Injunction.

Ruling of the Court of Appeals

The CA, however, found no grave abuse of discretion on the part of the RTC.^[49] The CA agreed with the RTC that respondent delivered the five titles to petitioner as security for petitioner's advances to CMC.^[50] Hence, the dispositive portion of the Decision^[51] dated September 21, 2006 reads:

WHEREFORE, the petition is DENIED, the two (2) assailed Orders of the Regional Trial Court, Branch 45, dated 11 April 2005 and 26 July 2005, are hereby **AFFIRMED**.

SO ORDERED.^[52]

Petitioner moved for reconsideration^[53] but the CA denied his motion in a Resolution^[54] dated March 6, 2007.

Issues

Hence, this petition raising the following issues:

WHETHER XXX THE HONORABLE [CA] COMMITTED A GRAVE AND SERIOUS ERROR WHEN IT FOUND THE ISSUANCE OF THE WRIT OF PRELIMINARY MANDATORY INJUNCTION TO BE IN ORDER, AND, CONSEQUENTLY, DECLARING THAT OPM NO LONGER HAD ANY REASON TO HOLD ON TO THE FIVE (5) TITLES.

II.

WHETHER XXX THE HONORABLE [CA] COMMITTED A GRAVE AND SERIOUS ERROR WHEN IT DID NOT FIND JUSTIFIABLE GROUNDS TO WARRANT THE WRIT'S DISSOLUTION BY OPM'S OFFER TO POST A COUNTER BOND UNDER SECTION 6, RULE 58 OF THE 1997 RULES OF COURT.

III.

WHETHER THE FINDINGS OF FACT OF THE [CA] COMMITTED WITH GRAVE ABUSE OF DISCRETION MAY BE REVIEWED BY THE SUPREME COURT ON APPEAL BY CERTIORARI.^[55]

Summed up, the issues boil down to whether the RTC committed grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing a writ of preliminary mandatory injunction commanding petitioner to return to respondent TCT Nos. 292199, 292200, 292201, 292202, and 292203, and in denying petitioner's offer to post a counter bond.

Petitioner's Arguments

Petitioner claims that respondent is not entitled to a writ of preliminary mandatory injunction because it failed to show that it has a clear legal right^[56] and that it would suffer grave and irreparable damage if a writ were not issued.^[57] Petitioner alleges that respondent delivered the titles to him as security for respondent's entire obligation to OPM in the total amount of more than P81 million, inclusive of interest.^[58] He insists that respondent still owes OPM the amount of P30 million, inclusive of interest.^[59] Considering that respondent's obligation to OPM is not yet fully paid, respondent is not entitled to a writ of preliminary mandatory injunction.^[60] Petitioner likewise claims that the P2 million bond posted by respondent is insufficient to protect the interest of OPM in the event that judgment is rendered in its favor.^[61] Lastly, petitioner imputes grave abuse of discretion on the part of the CA in not allowing OPM to post a counter bond.^[62]

Respondent's Arguments

Respondent, on the other hand, maintains that the RTC validly issued the writ of preliminary mandatory injunction.^[63] Respondent insists that it has a legal right to recover the five titles since petitioner defaulted in his obligation, exposing respondent to damages and financial burden.^[64] It claims that it had to pay interest and penalty charges to CMC because of petitioner's delay in paying the