

THIRD DIVISION

[G.R. No. 175145, March 28, 2008]

**SPOUSES ALFREDO and SHIRLEY YAP, Petitioners, vs.
INTERNATIONAL EXCHANGE BANK,^[1] SHERIFF RENATO C.
FLORA and/or OFFICE OF THE CLERK OF COURT, REGIONAL
TRIAL COURT, MAKATI CITY, Respondents.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside the Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 95074 dated 11 July 2006 which dismissed petitioner-spouses Alfredo and Shirley Yap's petition for *certiorari* which questioned the Order^[3] of Branch 264 of the Regional Trial Court (RTC) of Pasig City in Civil Case No. 68088 recalling and dissolving the Writ of Preliminary Injunction dated 13 August 2001, and its Resolution^[4] dated 9 October 2006 denying petitioners' Motion for Reconsideration.

The factual antecedents are as follows:

Respondent International Exchange Bank (iBank, for brevity) filed a collection suit with application for the issuance of a writ of preliminary attachment against Alberto Looyuko and Jimmy T. Go in the RTC of Makati. The case was raffled to Branch 150 and was docketed as Civil Case No. 98-791. On 7 October 1999, the trial court rendered a Decision in favor of respondent iBank and found Alberto Looyuko and Jimmy T. Go liable, ordering them to pay the amount of ninety-six million pesos (P96,000,000.00), plus penalty.

A Writ of Execution on the judgment against Mr. Looyuko was implemented. Thereafter, a Writ of Execution was issued against Mr. Go for his part of the liability. Thereupon, respondent Renato C. Flora, Sheriff of Branch 150 of the RTC of Makati City, issued a Notice of Sheriff's Sale on 12 May 2000 notifying all the parties concerned, as well as the public in general, that the following real properties, among other properties, covered by Transfer Certificates of Title (TCTs) No. PT-66751, No. PT-66749, No. 55469 and No. 45229 of the Registry of Deeds of Pasig City, TCT No. 36489 of the Registry of Quezon City, and TCTs No. 4621 and No. 52987 of the Registry of Deeds of Mandaluyong City, allegedly owned by Mr. Go will be sold at public auction on 15 June 2000.^[5] Said public auction did not push through.

On 13 June 2000, petitioner-spouses Alfredo and Shirley Yap filed a Complaint for Injunction with Prayer for Temporary Restraining Order and/or Preliminary Injunction with the RTC of Pasig City. The case was docketed as Civil Case No. 67945 and was raffled to Branch 158 thereof. Petitioners sought to stop the auction

sale alleging that the properties covered by TCTs No. PT-66751, No. PT-66749, No. 55469 and No. 45229 of the Registry of Deeds of Pasig City, TCT No. 36489 of the Registry of Quezon City, and TCTs No. 4621 and No. 52987 of the Registry of Deeds of Mandaluyong City, are already owned by them by virtue of Deeds of Absolute Sale^[6] executed by Jimmy Go in their favor. They further alleged that respondent sheriff disregarded their right over the properties despite their execution of an Affidavit of Adverse Claim to prove their claim over the properties and the publication of a Notice to the Public warning that various deeds had already been issued in their favor evidencing their right over the same.

A second Notice of Sheriff's Sale dated 30 June 2000 was issued by Sheriff Flora scheduling a public auction on 24 July 2000 for the afore-mentioned properties. The public auction did not happen anew. Thereafter, a third Notice of Sheriff's Sale dated 21 July 2000 scheduling a public auction on 22 August 2000 was issued.

On 21 August 2000, the RTC of Pasig City, Branch 158, issued an Order in Civil Case No. 67945 denying petitioners' application for a writ of preliminary injunction.^[7]

As scheduled, the public auction took place on 22 August 2000 for which respondent sheriff issued a Certificate of Sale stating that the subject properties had been sold at public auction in favor of respondent iBank, subject to the third-party claims of petitioners.^[8]

Petitioners filed with the RTC of Pasig City the instant case for Annulment of Sheriff's Auction Sale Proceedings and Certificate of Sale against iBank, the Clerk of Court and Ex-Officio Sheriff of RTC Makati City, and Sheriff Flora. The case was docketed as Civil Case No. 68088 and was raffled to Branch 264. The Complaint was amended to include a prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.^[9]

Engracio M. Escariñas, Jr., Clerk of Court VII and Ex-Officio Sheriff of RTC Makati City, filed his Answer while respondents iBank and Sheriff Flora filed an Omnibus Motion (Motion to Refer the Complaint to the Office of the Clerk of Court for Raffle in the Presence of Adverse Party and Motion to Dismiss) dated 17 October 2000.^[10]

In an Order dated 20 February 2001, Hon. Leoncio M. Janolo, Jr. denied the Omnibus Motion for lack of merit.^[11] Respondents iBank and Sheriff Flora filed a Motion for Reconsideration dated 26 February 2001.^[12]

A hearing was held on the application for preliminary injunction. On 18 July 2001, an Order was issued by Judge Janolo granting petitioners' application for issuance of a writ of preliminary injunction. The Order reads:

WHEREFORE, premises considered, plaintiffs' application for issuance of a Writ of Preliminary Injunction is GRANTED, and defendants and their representatives are enjoined from proceeding further with the execution, including consolidating title and taking possession thereof, against plaintiffs' real properties covered by Transfer Certificates of Title Nos. PT-66751, PT-66749, 55469, 45229, 4621, 52987 and 36489.

The Writ of Preliminary Injunction shall be issued upon plaintiffs' posting

of a bond executed to defendant in the amount of Three Million Pesos (P3,000,000.00) to the effect that plaintiffs will pay defendants all damages which the latter may sustain by reason of the injunction if it be ultimately decided that the injunction is unwarranted.^[13]

On 13 August 2001, upon posting a bond in the amount of three million pesos (P3,000,000.00), Judge Janolo issued the Writ of Preliminary Injunction.^[14]

Respondents iBank and Sheriff Flora filed on 29 August 2001 a Motion for Reconsideration^[15] of the order granting the Writ of Preliminary Injunction which the trial court denied in an Order dated 21 November 2001.^[16]

With the denial of their Motion for Reconsideration, respondents iBank and Sheriff Flora filed with the Court of Appeals a Petition for *Certiorari*, Prohibition and *Mandamus* with prayer for issuance of Temporary Restraining Order and/or Preliminary Injunction^[17] praying that it: (a) issue immediately a temporary restraining order enjoining Judge Janolo from taking any action or conducting any further proceeding on the case; (b) annul the Orders dated 18 July 2001 and 21 November 2001; and (c) order the immediate dismissal of Civil Case No. 68088.

In its decision dated 18 July 2003, the Court of Appeals dismissed the Petition.^[18] It explained that no grave abuse of discretion was committed by Judge Janolo in promulgating the two Orders. It emphasized that its ruling only pertains to the propriety or impropriety of the issuance of the preliminary injunction and has no bearing on the main issues of the case which are still to be resolved on the merits. The Very Urgent Motion for Reconsideration filed by respondents iBank and Sheriff Flora was denied for lack of merit.^[19]

Respondents iBank and Sheriff Flora thereafter filed with this Court a Petition for *Certiorari* which we dismissed. The Court's Resolution dated 7 March 2005 reads:

Considering the allegations, issues and arguments adduced in the petition for certiorari, the Court Resolves to DISMISS the petition for being a wrong remedy under the Rules and evidently used as a substitute for the lost remedy of appeal under Rule 45 of the 1997 Rules of Civil Procedure, as amended. Besides, even if treated as a petition under Rule 65 of the said Rules, the same would be dismissed for failure to sufficiently show that the questioned judgment is tainted with grave abuse of discretion.^[20]

Accordingly, an Entry of Judgment was issued by the Supreme Court certifying that the resolution dismissing the case had become final and executory on 30 July 2005.^[21]

Subsequently, respondents iBank and Sheriff Flora filed with the RTC of Pasig City, Branch 264, an Omnibus Motion (To Resolve Motion to Dismiss Complaint and/or Dissolve Injunction) dated 31 January 2006 praying that their pending Motion for Reconsideration dated 26 February 2001 which seeks for the dismissal of the case be resolved and/or the Writ of Preliminary Injunction previously issued be dissolved.^[22]

On 9 February 2006, petitioners filed their Comment thereon with Motion to Cite in Contempt the counsel^[23] of respondents. They pray that the pending Motion for Reconsideration be denied for being devoid of merit, and that the Motion to Dissolve Writ of Preliminary Injunction be also denied, it being a clear defiance of the directive of the Supreme Court which ruled with finality that the injunction issued by the trial court was providently issued and was not tainted with grave abuse of discretion. They further ask that respondents' counsel be cited in contempt of court and be meted out the appropriate penalty.^[24] Respondents filed a Reply dated 20 February 2006.

In a Manifestation dated 24 March 2006, respondents iBank and Sheriff Flora submitted an Affidavit of Merit to emphasize their resolve and willingness, among other things, to file a counter-bond to cover whatever damages petitioners may suffer should the trial court decide to dissolve the writ of preliminary injunction.^[25] Petitioners filed a Counter-Manifestation with Second Motion to Cite Respondents' Counsel in Direct Contempt of Court^[26] to which respondents filed an Opposition.^[27] Petitioners filed a Reply thereto.^[28]

In an Order^[29] dated 29 April 2006, the trial court recalled and dissolved the Writ of Preliminary Injunction dated 13 August 2001, and ordered respondents to post a counter-bond amounting to ten million pesos. It directed the Branch Clerk of Court to issue a Writ Dissolving Preliminary Injunction upon the filing and approval of the required counter-bond. The dispositive portion of the Order reads:

WHEREFORE, this Court's writ of preliminary injunction dated August 13, 2001 is recalled and dissolved. Defendants are hereby ordered to post a counter-bond amounting to ten million pesos (P10,000,000.00) to cover the damages plaintiffs would incur should a favorable judgment be rendered them after trial on the merits.

The Branch Clerk of Court is directed to issue a Writ Dissolving Preliminary Injunction upon the filing and approval of defendants' counter-bond.^[30]

The trial court explained its ruling in this wise:

In our jurisdiction, the provisions of Rule 58 of the Revised Rules of Court allow the issuance of preliminary injunction. This court granted plaintiffs' prayer preliminary injunction in the Order dated July 18, 2001 and the corresponding writ issued on August 13, 2001.

Defendants in this case, however, are not without remedy to pray for dissolution of preliminary injunction already granted because it is only interlocutory and not permanent in nature.

The provisions of Section 6, Rule 58 of the Revised Rules of Court allow dissolution of the injunction granted provided there is affidavit of party or persons enjoined; an opportunity to oppose by the other party; hearing on the issue, and filing of a bond to be fixed by the court sufficient to compensate damages applicant may suffer by dissolution thereby.

A preliminary injunction is merely a provisional remedy, an adjunct to the main case subject to the latter's outcome. Its sole objective is to preserve the *status quo* until the trial court hears fully the merits of the case. The *status quo* is the last actual, peaceable and uncontested situation which precedes a controversy. The *status quo* should be that existing at the time of the filing of the case. A preliminary injunction should not establish new relations between the parties, but merely maintain or re-establish the pre-existing relationship between them. x x x.

When the complainant's right or title is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is not proper and constitutes grave abuse of discretion. x x x. In the case at bar, plaintiffs' deed of sale was purported to be not duly notarized. As such, the legal right of what the plaintiffs claim is still doubtful and such legal right can only be threshed out in a full blown trial where they can clearly establish the right over the disputed properties.

Moreover, defendants are willing to post a counter bond which could cover up to the damages in favor of plaintiffs in case the judgment turns out to be adverse to them. Under the Rules of Civil Procedure, this is perfectly allowed and the dissolution of the writ of injunction can accordingly be issued. In the case of *Lasala vs. Fernandez*, the highest court has enunciated that "a court has the power to recall or modify a writ of preliminary injunction previously issued by it. The issuance or recall of a preliminary writ of injunction is an interlocutory matter that remains at all times within the control of the court." (G.R. No. L-16628, May 23, 1962). The defendants had shown that dissolution of the writ of injunction is just and proper. It was duly shown that great and irreparable injury would severely cause the defendants if the writ of injunction shall continue to exist.^[31]

On 5 May 2006, petitioners filed a Petition for *Certiorari* before the Court of Appeals asking that the trial court's Order dated 29 April 2006 be set aside.^[32]

During the pendency of the Petition for *Certiorari*, petitioners filed before the trial court a Very Urgent Motion to Suspend Proceedings^[33] to which respondents filed a Comment.^[34]

On 11 July 2006, the Court of Appeals resolved to dismiss outright the Petition for *Certiorari* for failure of petitioners to file a motion for reconsideration of the Order dated 29 April 2006.^[35] The Motion for Reconsideration^[36] filed by petitioners was denied.^[37]

After being granted an extension of thirty days within which to file a petition for *certiorari*, petitioners filed the instant Petition on 14 December 2006. They made the following assignment of errors: