

FIRST DIVISION

[G.R. NO. 167514, October 25, 2005]

**METROPOLITAN MANILA DEVELOPMENT AUTHORITY,
PETITIONER, VS. TRACKWORKS RAIL TRANSIT ADVERTISING,
VENDING AND PROMOTIONS, INC., RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition for review^[1] assails the August 31, 2004 Decision^[2] of the Court of Appeals in CA-G.R. SP No. 70932, which affirmed the March 25, 2002 Order^[3] of the Regional Trial Court of Pasig City, Branch 155, in Civil Case No. 68864, granting the issuance of a writ of preliminary injunction restraining petitioner Metropolitan Manila Development Authority (MMDA) from dismantling the signages, banners, and billboards installed by respondent Trackworks Rail Transit Advertising, Vending and Promotions, Inc. (TRACKWORKS) at the Metro Rail Transit structure along the Epifanio De los Santos Avenue (MRT 3), and its March 14, 2005 Resolution^[4] denying petitioner's motion for reconsideration.

The undisputed facts show that on August 8, 1997, the Philippine government, through the Department of Transportation and Communications entered into a Build, Lease and Transfer (BLT) Agreement with Metro Rail Transit Corporation, Limited (MRTC). In the BLT Agreement, MRTC undertook to build MRT 3 which it shall own for 25 years, after which, ownership shall be transferred to the Philippine government in accordance with Republic Act No. 6957 or the Build, Operate and Transfer Law. The agreement allows MRTC, either by itself or through any estate developers, to develop commercial premises in the MRT 3 structure or to obtain advertising income therefrom, thus:

16.1. Details of Development Rights. DOTC hereby confirms and awards to Metro Rail the rights to (a) develop commercial premises in the Depot and the air space above the Stations, which shall be allowed to such height as is legally and technically feasible, (b) lease or sub-lease interests or assign such interests in the Depot and such air space and (c) obtain any advertising income from the Depot and such air space and LRTS Phase I....^[5]

"LRTS Phase I" means the rail transport system comprising about 16.9 line kilometers extending from Taft Avenue, Pasay City, to North Avenue, Quezon City, occupying a strip in the center of EDSA approximately 10.5 meters wide (approximately 12 meters wide at or around the Boni Avenue, Santolan and Buendia Stations), plus about 0.1 to 0.2 line kilometers extending from the North Avenue Station to the Depot, together with the Stations, 73 Light Rail Vehicles and all ancillary plant, equipment and facilities, as more particularly detailed in the

Specifications.^[6]

16.2. Assignment of Rights. During the Development Rights Period, Metro Rail shall be entitled to assign all or any of its rights, titles and interests in the Development Rights to bona fide real estate developers. In this connection, Metro Rail may enter into such development, lease, sub-lease or other agreements or contracts relating to the Depot and the air space above the Stations (the space not needed for all or any portion of the operation of the LRTS) for all or any portion of the Development Rights Period....^[7]

On October 27, 1998, MRTC entered into a Contract for Advertising Services with TRACKWORKS giving the latter the exclusive right to undertake advertising and promotional activities within and along the exterior and interior of the MRT 3 structure.^[8] Thereafter, TRACKWORKS proceeded to install commercial billboards, banners, signages and other forms of advertisement in the different parts of MRT 3 structure.

On January 29, 2001,^[9] however, the MMDA requested TRACKWORKS to dismantle the billboards purportedly in conformity with MMDA Regulation No. 96-009, prohibiting the posting, installation and display of any kind or form of billboards, signs, posts, streamers, in any part of the road, sidewalk, center island, posts, trees, parks and open space. TRACKWORKS refused to comply and invoked its advertising contract with MRTC. Consequently, MMDA started dismantling the billboards and streamers of TRACKWORKS.

On March 1, 2002, TRACKWORKS filed with the trial court a petition for injunction with prayer for the issuance of a temporary restraining order and preliminary injunction docketed as Civil Case No. 68864.^[10]

On March 6, 2002, the court *a quo* issued a temporary restraining order advising petitioner to desist from dismantling or destroying the signages, banners and billboards of TRACKWORKS.^[11] On March 25, 2002, the trial court issued the assailed order granting the issuance of a writ of preliminary injunction against petitioner. The decretal portion thereof, reads:

WHEREFORE, in view of the foregoing, and without delving into the merits of the instant petition, let a WRIT OF PRELIMINARY INJUNCTION be issued in the instant case restraining the respondent FROM DISMANTLING or otherwise destroying the signages, banners and billboards installed by the petitioner until further orders from this court, conditioned upon the filing by the petitioner and approval of this Court of a bond in the amount of Php200,000.00 to answer for any damage that the respondent may suffer if it turns out later on that the aforesaid writ was improperly issued.

SO ORDERED.^[12]

Without filing a motion for reconsideration, petitioner filed a petition for certiorari with prohibition before the Court of Appeals which denied the petition and affirmed the challenged order of the trial court. It held that TRACKWORKS is entitled to

protection because the commercial advertisements of the latter is sanctioned by the BLT Agreement. The appellate court further ruled that the petition is dismissable because petitioner failed to move for reconsideration of the trial court's order before resorting to the remedy of *certiorari* under Rule 65 of the Rules of Court.

Petitioner's motion for reconsideration was denied, hence, the instant petition.

The sole issue for resolution is whether or not the trial court gravely abused its discretion in issuing the writ of preliminary injunction.

Section 3, Rule 58 of the Rules of Court enumerates the grounds for the issuance of a writ of preliminary injunction as follows:

Sec. 3. *Grounds for issuance of preliminary injunction.* - A preliminary injunction may be granted when it is 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 the 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 attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

We held in *Los Baños Rural Bank, Inc. v. Africa*^[13] that injunction is a preservative remedy aimed to protect the complainant's substantive rights and interests during the pendency of the principal action. A preliminary injunction is merely temporary. It is to be resorted to only when there is a pressing necessity to avoid injurious consequences that cannot be remedied under any standard of compensation. Injunction, like other equitable remedies, should be issued only at the instance of a suitor who has sufficient interest in or title to the right or the property sought to be protected. It is proper only when the plaintiff appears to be entitled to the relief demanded in the complaint. The existence of the right and the violation thereof must be alleged in the complaint and must constitute at least a *prima facie* showing of a right to the final relief. Thus, there are two requisite conditions for the issuance of a preliminary injunction, namely, (1) the right to be protected exists *prima facie*, and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented would cause an irreparable injustice.

Further, while a clear showing of the right is necessary, its existence need not be conclusively established. In fact, the evidence required to justify the issuance of a writ of preliminary injunction in the hearing thereon need not be conclusive or complete. The evidence need only be a "sampling" intended to give the court an idea of the justification for the preliminary injunction, pending judgment on the merits.^[14] Thus, to be entitled to the writ, respondents are only required to show

that they have the ostensible right to the final relief prayed for in their complaint.

In the case at bar, we find that TRACKWORKS sufficiently established a right to be protected by a writ of preliminary injunction. The contract with the MRTC vested it the exclusive right to undertake advertising and promotional activities at the MRT 3 structure. The Court of Appeals therefore correctly ruled that what is involved here is not an indiscriminate posting and installation of commercial advertisements but one sanctioned by a contract. If not restrained, the dismantling of, and prohibition from, installing advertisements at the MRT 3 will cause irreparable injury to TRACKWORKS. This is especially so because TRACKWORKS is generally not entitled to recover damages resulting from acts of public officers done in their official capacity and in the honest belief that they have such power.^[15] Unless bad faith is clearly proven, TRACKWORKS will be left without recourse even if petitioner is later declared without authority to prohibit the posting of billboards and streamers at the MRT 3 structure. Indeed, prudence dictates that the *status quo* be preserved until the merits of the case can be heard fully.

Moreover, the issuance of a writ of preliminary injunction pending determination of the case is proper because TRACKWORKS successfully raise the issue of petitioner's power to effect the dismantling of the disputed commercial advertisements. The general rule that a statute or ordinance enjoys the presumption of validity and as such, cannot be restrained by injunction,^[16] finds no application here. The core issue in the present case is not the validity of the law or statute sought to be enforced by petitioner but its authority to enforce the same. Though the proper construction of the applicable statutes may incidentally be addressed, the disposition of the instant controversy hinges on the focal question of whether or not petitioner can validly prohibit the installation of commercial advertisements at the MRT 3 structure on the basis of MMDA Regulation No. 96-009;^[17] Presidential Decree (PD) No. 1096, or the National Building Code of the Philippines and its Implementing Rules and Regulations; and Metropolitan Manila Commission (MMC) Memorandum Circular No. 88-09,^[18] dated September 16, 1988.

TRACKWORKS contends that petitioner cannot validly prohibit the installation of commercial advertisement at the MRT 3 structure on the basis alone of MMDA Regulation No. 96-009 because it neither has legislative nor police power. It also avers that petitioner does not have the authority to enforce the pertinent provisions on Signs under the Building Code and its Implementing Rules^[19] because the power to enforce the same is lodged with

the Secretary of the Department of Public Works and Highways.^[20]

Thus, in resolving said issues, the court *a quo* is confronted with the following legal queries (1) can petitioner validly order the dismantling of TRACKWORKS' commercial advertisements based on MMDA Regulation No. 96-009; (2) is MMC Memorandum Circular No. 88-09 in conformity with the provisions of the Building Code on Signs? (3) does petitioner possess the authority to enforce the provisions of the Building Code and/or MMC Memorandum Circular No. 88-09? and (4) if the answer to the latter question is in the affirmative, can TRACKWORKS' posters, streamers and billboards be considered as distractions to motorists or offensive to aesthetic and cultural values and traditions?