

SECOND DIVISION

[G.R. No. 163406, November 24, 2009]

**POWER SITES AND SIGNS, INC., PETITIONER, VS. UNITED NEON
(A DIVISION OF EVER CORPORATION), RESPONDENT.**

DECISION

DEL CASTILLO, J.:

Before a court grants injunctive relief, the following must be demonstrated: that complainant is entitled to the relief sought, the actual or threatened violation of complainant's rights, the probability of irreparable injury, and the inadequacy of pecuniary compensation as relief.^[1] Otherwise, there is no basis for the issuance of a writ of injunction.

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court of the Decision^[2] dated January 29, 2004 and the Resolution^[3] dated April 28, 2004 of the Court of Appeals in CA-G.R. SP No. 72689.

Petitioner's Factual Allegations

Power Sites and Signs, Inc. (Power Sites) is a corporation engaged in the business of installing outdoor advertising signs or billboards. It applied for, and was granted, the necessary permits to construct a billboard on a site located at Km. 23, East Service Road, Alabang, Muntinlupa (the site).^[4] After securing all the necessary permits, Power Sites began to construct its billboard on the site.

Subsequently, in March 2002, petitioner discovered that respondent United Neon, a Division of Ever Corporation (United Neon), had also began installation and erection of a billboard only one meter away from its site and which completely blocked petitioner's sign. Thus, on March 5, 2002, petitioner requested United Neon to make adjustments to its billboard to ensure that petitioner's sign would not be obstructed.^[5] However, petitioner's repeated requests that respondent refrain from constructing its billboard were ignored,^[6] and attempts to amicably resolve the situation failed.^[7]

Respondent's Factual Allegations

In January 2002, United Neon and Power Sites separately negotiated with Gen. Pedro R. Balbanero to lease a portion of a property located at East Service Road, South Superhighway, Alabang, Muntinlupa City, in order to build a billboard on the premises.^[8] Gen. Balbanero rejected Power Sites' proposal and decided to lease the premises to United Neon. Thus, on January 26, 2002, United Neon and Gen. Balbanero entered into a Contract of Lease (the lease contract).^[9]

On January 28, 2002, United Neon registered the lease contract with the Outdoor Advertising Association of the Philippines (OAAP), in accordance with Article 11, Sec. 3.6 of the OAAP Code of Ethics/Guidelines.^[10] By virtue of its registration of the Contract of Lease with the OAAP, United Neon alleged that it obtained the exclusive right to the line of sight over the leased property, in accordance with Article 11, Section 3.7 of the OAAP Code of Ethics/Guidelines.^[11]

Sometime in February 2002, United Neon started construction of its billboard. Power Sites, after failing to lease the premises from Gen. Balbanero, negotiated with the owner of the adjacent property and secured its own lease in order to erect a billboard that would disrupt United Neon's exclusive line of sight.^[12] To protect its rights, on March 6, 2002, United Neon urged Power Sites to relocate the latter's sign to another location, or to construct it in such a way that the sign would not obstruct the view of United Neon's billboard.^[13]

Legal Proceedings

In a letter-complaint dated June 29, 2002, petitioner requested the Muntinlupa City Engineer and Building Official to revoke United Neon's building permit and to issue a Cease and Desist Order against it.^[14] On July 4, 2002, the City Building Official, Engineer Robert M. Bunyi, referred the complaint to United Neon for comment:

This refers to your ongoing construction of signboard located at East Service Road, Alabang, City of Muntinlupa, which was granted Building Permit No. 12-02-05-357 dated May 22, 2002 and which is the object of an attached formal complaint x x x

Relative to the foregoing and per inspection conducted by this office, we have noted that your sign is 4 meters away from an existing and on going sign construction with building permit no. 12-02-02-111 which was granted earlier than your permit.

We therefore direct you to submit your position and all your related supporting evidence whether or not you violated the Code of Ethics of Advertisement which is expressly supported by the National Building Code (PD 1096) Rule V, Section 2.1 of the General Provision and to maintain status quo by desisting from all construction activities in the meantime that this matter is being studied for resolution by this office.
^[15]

However, before a resolution could be made by the City Building Official, Power Sites filed on July 1, 2002, a *Petition for Injunction with Writ of Preliminary Injunction and Prayer for Temporary Restraining Order and Damages*^[16] against United Neon before the Regional Trial Court (RTC) of Muntinlupa City, which was raffled to Branch 256 and docketed as Civil Case No. 02-143.

After the filing of the parties' respective memoranda,^[17] which took the place of testimonial evidence, the RTC granted petitioner's prayer for the issuance of a preliminary injunction in an Order dated August 1, 2002.^[18] The Writ of Injunction

was issued on the same day.^[19] The RTC ruled:

After considering the arguments raised by both parties in their respective Memoranda, this Court finds that the plaintiff is entitled to the relief sought considering that the commission and/or continuance of the act of installing the signage by the respondent during the litigation would work grave injustice and irreparable damage to petitioner since it would surely cause immense loss in profit and possible damage claims from its clients because it would certainly cover the sign of the petitioner's clients.

x x x x

WHEREFORE, this Court finds the plaintiff's application for the issuance of a Writ of Preliminary Injunction to be meritorious and well taken.

Let therefore a Writ of Preliminary Injunction be issued against the respondent UNITED NEON to cease and desist from constructing/installing the signage and to dismantle any existing sign, girds [sic] or post that support said sign.

x x x x^[20]

United Neon then filed a *Petition for Prohibition and Certiorari with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction*^[21] before the Court of Appeals, which was docketed as CA-G.R. SP No. 72689. In brief, United Neon claimed that the grant of preliminary injunction was unwarranted, particularly because Power Sites only prayed for a prohibitory injunction in its original petition, but the Order went as far as to grant a mandatory injunction in favor of Power Sites. United Neon prayed that the Court of Appeals invalidate the RTC's Order and Writ dated August 1, 2002, issue a temporary restraining order enjoining the RTC from further proceeding with Civil Case No. 02-143, and, after hearing, enjoin the RTC from enforcing the August 1, 2002 Order.

After the parties' exchange of pleadings, the Court of Appeals invalidated the Order of the RTC dated August 1, 2002 and the Writ of Preliminary Injunction, but denied the prayer for prohibition, to wit:

To warrant the issuance of an injunction, whether prohibitory or mandatory, private respondent's right to the line of sight must be clear. In this case, there is a cloud of doubt as to private respondent's right to the claimed line of sight as petitioner had manifested prior registration of its billboard with the Outdoor Advertising Association of the Philippines (OAAP) which allegedly gave petitioner a protection of its exclusive right to the line of sight.

Injunction should be issued when there is a substantial challenge to the claimed right. The conflicting claims by the parties to the right to the line of sight present an impression that the right claimed by private respondent as its basis for the prayer for the injunctive relief is far from

clear. While it is not required that private respondent's right be conclusively established at this stage, it is nevertheless necessary to show, at least tentatively, that it exists and is not vitiated by any substantial challenge or contradiction, such as has been made by petitioner.

Even the issue of the status quo ante cannot be determined clearly in this case. The status quo ante referred to by private respondent was seriously challenged by petitioner by claiming it was the first to build its structure. Hence, public respondent had no clear basis for the status quo ordered in the injunctive order.

x x x x

On the matter of the prayer for prohibition, it is incorrect and improper to declare public respondent incapable of rendering a fair trial due to the erroneous injunctive order issued. Petitioner may avail of other legal remedies if it truly believes that public respondent can no longer deliver fair judgment in this case.

WHEREFORE, premises considered, the petition is PARTIALLY GRANTED, as follows:

1. The assailed Order dated August 1, 2002 and the Writ of Preliminary Injunction issued by public respondent in Civil Case No. 02-143 are hereby declared NULL AND VOID for having issued with grave abuse of discretion amounting to lack or excess of jurisdiction; and
2. The prayer for prohibition is hereby DENIED for lack of merit.

SO ORDERED. ^[22]

Petitioner's Motion for Partial Reconsideration was denied by the Court of Appeals in a Resolution dated April 28, 2004. ^[23] Hence, this petition.

Arguments

In essence, Power Sites claims that the Court of Appeals gravely erred in invalidating the Writ of Preliminary Injunction for the following reasons:

- 1) Power Sites has a better right over the line of sight because it constructed its billboard ahead of the respondent and is therefore entitled to protection under the National Building Code. United Neon could not have begun construction ahead of Power Sites (allegedly in February 2002), since it only obtained its Building Permit in May of 2002. Further, the alleged registration of the lease contract with the OAAP does not bind Power Sites, since the latter is not a member of the OAAP. In any event, proof of the alleged registration of the lease contract was not presented before the trial court; all that was submitted in evidence was an application letter to the OAAP.

2) Even if its original petition did not contain a prayer for the issuance of a mandatory injunction, its Memorandum before the trial court requested the grant of a mandatory injunction.^[24] United Neon was still in the initial stages of construction at the time the original petition was filed; hence, Power Sites only prayed for the issuance of a preliminary prohibitory injunction to preserve the *status quo*. However, at the time the parties were required to file their respective memoranda, United Neon's structure was already fully completed. Thus, a preliminary mandatory injunction was required.

3) The Court of Appeals should have dismissed outright the Petition for *Certiorari*, since United Neon failed to attach all the relevant pleadings, in disregard of the Rules of Court.

On the other hand, United Neon claims that the Court of Appeals' Decision and Resolution were correct, and the trial court's Order dated August 1, 2002 and the writ of injunction were patently illegal, for the following reasons:

1) Power Sites has no clear and unmistakable right to be protected, since it failed to register its lease contract with the OAAP. In contrast, it is United Neon that has the exclusive right to the line of sight because United Neon began construction ahead of Power Sites, and registered its lease with the OAAP.

2) The issuance of the preliminary mandatory injunction by the RTC, which went beyond the allegations and prayer in the initiatory petition, constituted grave abuse of discretion amounting to lack or excess of jurisdiction.

3) Power Sites did not even have the required permits to construct a billboard, since all the permits issued by the Muntinlupa City government were issued to HCLC Resources and Development Corporation, and not to Power Sites.

4) Power Sites willfully violated the rules against forum shopping, since it sought the same relief from the Muntinlupa City Building Official and before the RTC.

Our Ruling

We find the grant of a preliminary mandatory injunction by the trial court not warranted. Consequently, we affirm the Decision of the Court of Appeals dated January 29, 2004 and its Resolution dated April 28, 2004 in CA-G.R. SP No. 72689.

Procedural Issue

The Court of Appeals properly exercised its discretion in giving due course to the petition

Power Sites claims that the Court of Appeals should not have entertained the petition for *certiorari* because United Neon failed to attach the requisite documentary evidence to its petition.

We are not persuaded. Section 1 of Rule 65 of the Rules of Court provides: