

## SECOND DIVISION

**[ G.R. No. 114170, January 15, 1999 ]**

**PROSPERITY CREDIT RESOURCES, INC., PETITIONER, VS. COURT  
OF APPEALS AND METROPOLITAN FABRICS, INC.,  
RESPONDENTS.**

### **D E C I S I O N**

**MENDOZA, J.:**

For review in this case is a decision<sup>[1]</sup> of the Sixth Division of the Court of Appeals in CA GR. 28684-SP dated November 26, 1993 setting aside a writ of preliminary mandatory injunction issued by the Regional Trial Court of Quezon City (Branch 95).

On August 3, 1984, petitioner Prosperity Credit Resources, Inc. gave a loan to private respondent Metropolitan Fabrics, Inc.<sup>[2]</sup> To secure the payment of the loan, private respondent mortgaged to petitioner seven parcels of land located at 685 Tandang Sora Avenue, Bo. Banlat, Quezon City.<sup>[3]</sup> The lots comprise a commercial compound with Tandang Sora Avenue as the nearest public road.

By October 27, 1987, private respondent's loan amounted to P10.5 million.<sup>[4]</sup> As private respondent defaulted in the payment of the loan, petitioner foreclosed the mortgage and, in the ensuing public bidding, became the highest bidder and purchaser of the seven (7) lots subject of the mortgage.

Later, private respondent negotiated with petitioner for the redemption of three lots covered by TCT Nos. 317705, 317706, and 317707,<sup>[5]</sup> all located on the southern and middle portions of the compound. As the reacquisition of these three lots by private respondent would leave the remaining four lots on the northwestern side without access to Tandang Sora Avenue, petitioner acceded to private respondent's request on the condition that petitioner be given a right of way on the existing private road which forms part of the area to be redeemed by private respondent. The parties' agreement was embodied in a Memorandum of Undertaking, dated September 18, 1987, the full text of which reads:<sup>[6]</sup>

#### MEMORANDUM OF UNDERTAKING

KNOW ALL MEN THESE PRESENTS:

That METROPOLITAN FABRICS, INC. is the registered owner of that certain land covered by Transfer Certificate of Title No. 317709, more particularly described as follows:

A parcel of land (Lot 11 (Existing Road) of the consolidation-subdn. plan (LRC) Pcs-27706, approved as a non-subdn.

project, being a portion of the consolidation of Lots 373-E, (LRC) Psd-16383; 377-B, Fls-2163-D; 377-C-1,2,3, & 4 (LRC) Psd-5025; 377-C-5-A, & B, (LRC) Psd-9474; 384-A & 387-B-1, (LRC) Psd-254813; 388-A & C, Psd-30663; 388-B-1,2,3,4 & 5, Psd-54827; 389-A-1,2 & 3, 389-B-1 (LRC) Psd-10087; and 389-B-2-C, (LRC) Psd-18842; LRC (GLRO) Rec. No. 5975) situated in the Bo. of Banlat, Quezon City, Metro Manila, Is. of Luzon ..... containing of an area of FIVE THOUSAND THREE HUNDRED SIXTY SEVEN (5,367) SQUARE METERS, more or less.

That the above-described lot, being an existing private road, will remain open to ingress and egress for whatever kind of passage in favor of PROSPERITY FINANCIAL RESOURCES, INC. or its successors-in-interest, the mortgagee of Lots 1,4,5,6,7,8 and 9 of the consolidation-subdivision plan, Pcs-27706 of Transfer Certificates of Title Nos. 317699, 317702, 317703, 317704, 317705, 317706 & 317707, respectively, in the name of METROPOLITAN FABRICS, INC.

DONE this Sep. 18 1987 in the city of Manila.

On November 7, 1991, petitioner filed an injunctive suit in the Regional Trial Court of Quezon City (Branch 95). Petitioner alleged that, in violation of the terms of the Memorandum of Agreement, private respondent refused to allow petitioner to make excavations on one side of the access road for the installation of water pipes; that it banned entry of petitioner's trucks and those of its tenants between 11:30 A.M. to 1:00 P.M. and 10:00 P.M. to 7:00 A.M.; and that it subjected the vehicles to unnecessary searches. Petitioner sought the issuance of a writ of preliminary mandatory injunction requiring private respondent "to allow [petitioner] to proceed with the MWSS installation project over the road lot in question, to allow [petitioner's] and [its] tenants' delivery trucks and other vehicles access to the same at any time and without undergoing unnecessary searches, and to otherwise recognize [petitioner's] right of way over the said lot."<sup>[7]</sup> Petitioner prayed that, after trial, the writ be made final.

On December 21, 1991, private respondent filed an answer with counterclaim, alleging that petitioner's right to undertake excavations on the access road was not provided for in the Memorandum of Undertaking.<sup>[8]</sup> As counterclaim, private respondent alleged that it was petitioner which caused damage to private respondent's tenants by undertaking, without its consent, construction works on the access road which raised its level to about a meter and caused serious flooding of the nearby buildings whenever it rained;<sup>[9]</sup> and that, as a result, its tenants demanded compensation for damage to their merchandise and equipment occasioned by the flooding. Private respondent prayed for P2.1 million as counterclaim.<sup>[10]</sup>

The trial court required the parties to submit position papers in connection with petitioner's prayer for a preliminary mandatory injunction.<sup>[11]</sup> After the parties had done so, the trial court granted, on February 14, 1992, petitioner's prayer for a preliminary writ, conditioned upon the filing by petitioner of a bond in the amount of P500,000.00. The trial court said in part:

. . . [T]he court finds that to deny plaintiff's application for a preliminary mandatory injunction writ would be to disregard its right of way in respect of the road lot in question, a right clearly set forth in defendant's memorandum of undertaking of September 18, 1987; indeed, no cogent reason appears to warrant treating the terms "for whatever kind of passage" contained therein as nothing more than a useless, meaningless redundancy . . .

ACCORDINGLY, plaintiff's subject application is hereby granted and the Court hereby directs that upon the filing and approval of the corresponding injunction bond in the sum of P500,000.00, . . . let corresponding preliminary mandatory injunction writ be issued directing defendant to allow plaintiff to proceed with its MWSS installation project over the road lot in question, to allow plaintiff's and its tenant's delivery trucks and other vehicles access to the same at any time and without undergoing unnecessary searches, and to otherwise recognize plaintiff's right of way over the said road lot, pending the termination of this litigation and/or unless a contrary order is issued by this Court . . . .<sup>[12]</sup>

On March 2, 1992, the trial court issued the writ upon filing of the required bond by petitioner.<sup>[13]</sup> Private respondent filed a motion for reconsideration of the orders granting injunction which the trial court denied.<sup>[14]</sup> However, it increased the injunction bond to P2.1 million.<sup>[15]</sup>

Private respondent filed a petition for certiorari and prohibition with the Court of Appeals to annul the aforesaid orders, dated February 14, 1992 and March 2, 1992, of the trial court. On November 26, 1994, the appellate court granted the petition and set aside the questioned orders after finding that the trial court had acted with grave abuse of discretion in issuing them.<sup>[16]</sup> Its motion for reconsideration having been denied on February 28, 1994, petitioner filed the present petition for review on certiorari alleging that:<sup>[17]</sup>

1. THE COURT OF APPEALS GRAVELY ERRED WHEN IT EXERCISED CERTIORARI POWERS TO REVERSE AN ERROR OF JUDGMENT COMMITTED BY THE REGIONAL TRIAL COURT, UPON FINDING THAT THE LOWER COURT "MISUNDERSTOOD" THE RIGHT OF HEREIN PETITIONER PROSPERITY OVER THE ROAD LOT IN QUESTION.

2. THE COURT OF APPEALS GROSSLY ERRED WHEN IT APPLIED THE DOCTRINE ENUNCIATED IN RIVAS V. SEC (190 SCRA 295) DESPITE THE DIVERSITY IN FACTUAL SETTING OF THE INSTANT CASE VIS-A-VIS THAT OBTAINING IN THE CITED CASE.

3. THE COURT OF APPEALS GRAVELY ERRED WHEN IT DECIDED THE MERITS OF THE MAIN CASE IN A CERTIORARI PROCEEDING PRACTICALLY RENDERING ACADEMIC THE HEARING PROPER YET TO BE CONDUCTED BY THE REGIONAL TRIAL COURT.

4. THE COURT OF APPEALS GRAVELY ERRED WHEN IT MADE FINDINGS OF FACTS ON THE BASIS OF THE REPRESENTATION AND RECITAL OF