

FIRST DIVISION

[G.R. No. 202342, July 19, 2017]

AMA LAND, INC., PETITIONER, VS. WACK WACK RESIDENTS' ASSOCIATION, INC., RESPONDENT.

DECISION

CAGUIOA, J:

Before the Court is a petition^[1] for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision^[2] dated June 14, 2012 (Decision) of the Court of Appeals^[3] (CA) in CA-G.R. SP No. 118994, granting the petition filed by respondent Wack Wack Residents' Association, Inc. (WWRAI), reversing and setting aside the October 28, 2010 and February 23, 2011 Orders^[4] of the Regional Trial Court of Pasig City assigned in San Juan (Metropolitan Manila), Branch 264 (RTC) in Civil Case No. 65668, ordering the RTC to issue the injunctive relief prayed for by WWRAI pending the determination of the petition for the declaration of permanent easement of right of way, and directing WWRAI to amend the title and the averments in the petition before the CA by disclosing the names of its principals and bringing the action in a representative capacity.

The Facts and Antecedent Proceedings

The CA Decision summarized the facts as follows:

A commercial and residential building project located at Epifanio Delos Santos Avenue corner Fordham Street in Wack Wack Village, Mandaluyong City, was proposed by x x x AMA Land, Inc. (AMALI x x x) in [the] mid-1990s. As the latter proceeded to secure the needed licenses and permits for the construction of the project, the following were issued: Building Location Permit; Certificate of Locational Viability; Locational Clearance; Excavation and Ground Preparation Permit; Building Permit; Environmental Compliance Certificate; HLURB Certificate of Registration; and HLURB License to Sell.

On March 18, 1996, AMALI notified [WWRAI] - a registered homeowners' association of Wack Wack Village - of its intention to use Fordham Street as an access road and staging area of the project. As AMALI received no response from [WWRAI], the former temporarily enclosed the job site and set up a field office along Fordham Street. [WWRAI] claimed, however, that AMALI already converted part of the said street as barrack site and staging area even before March 18, 1996. All subsequent attempts of [WWRAI] to remove the said field office proved futile.

[On May 8, 1996,] AMALI then filed a petition before the [RTC], [wherein it seeks the temporary use of Fordham Street belonging to WWRAI as an

access road to AMALI's construction site of its AMA Tower project pursuant to Article 656^[5] of the Civil Code, and to establish a permanent easement of right of way in its favor over a portion of Fordham Street pursuant to Article 649^[6] of the Civil Code. Aside from its prayer for the declaration of temporary and permanent easement of right of way in its favor over a portion of Fordham Street, AMALI is also] praying for: (a) a temporary restraining order (TRO) to immediately enjoin [WWRAI] from demolishing and removing the temporary field office, constructing a fence isolating Fordham Street, and preventing AMALI from gaining access to the construction site; (b) a writ of preliminary mandatory injunction directing [WWRAI] to allow AMALI to use Fordham Street as an access road and staging area; (c) an order making the TRO and the aforesaid writ permanent; and (d) an order declaring a permanent right of way in favor of AMALI.

In its answer, [WWRAI] contends that the project of AMALI violates the applicable zoning ordinances; that the licenses and permits issued in favor of AMALI were irregular and unlawful; that the project is a nuisance, and; that Epifanio Delos Santos Avenue can be utilized as the staging area of the project.

On July 24, 1997, the [RTC] granted the writ of preliminary mandatory injunction "directing [WWRAI] to allow [AMALI] to use Fordham Street through a temporary easement of right of way".

In 1998, due to financial crisis, the construction of the project was put on hold and AMALI was constrained to finish merely the basement. Although AMALI asserted that "it continued to pay [WWRAI] for the use of Fordham Street", [WWRAI] claimed otherwise.

In 2002, before the Regional Trial Court of Muntinlupa, Branch 256, AMALI filed a petition for corporate rehabilitation which was later on approved. Also, the said rehabilitation court in Muntinlupa directed the Office of the Building Official and/or Office of the City Engineer of Mandaluyong City to issue an Amended Building Permit in favor of AMALI. As a consequence, Building Permit No. 08-2011-0048 was issued.

As AMALI resume[d] the project, [WWRAI] filed in January 2010, an "Urgent Motion to Set for Hearing" its application for temporary restraining order and/or writ of preliminary injunction. The [RTC] heard the application and received the evidence presented by [WWRAI]. AMALI, on the other hand, failed to attend the proceedings. On October 28, 2010, the [RTC] ruled against the motion. Thus, it ordered the following:

WHEREFORE, [WWRAI]'s application for the issuance of temporary restraining order and/or writ of preliminary injunction is DENIED for lack of merit.

[AMALI] is directed to make representations with the Building Officials of Mandaluyong City on its application for permit to construct the building.

Attention of the Building Officials of Mandaluying (sic) City is invited to the pending controversy of [the] parties involved, hence, his (sic) prompt final decision is suggested. x x x

A motion for reconsideration of the above order was filed but was denied on February 23, 2011. Hence, the x x x petition [for *certiorari* under Rule 65 before the CA].

On June 10, 2011, after a [clarificatory] hearing, [the CA] granted [WWRAI]'s application for a temporary restraining order[, and, accordingly, AMALI was commanded to cease and desist from further committing the act complained of, which is the construction of the commercial and residential condominium project located along EDSA comer Fordham Street in Wack Wack Village.^[7] Then, on July 28, 2011, the application of [WWRAI] for the issuance of a writ of preliminary injunction was granted as well pending resolution of the x x x petition for *certiorari* [before the CA].^[8]

The CA Ruling

The CA rendered its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is **GRANTED**. The October 28, 2010 and February 23, 2011 Orders of the Regional Trial Court of Pasig City assigned in San Juan (Metropolitan Manila), Branch

264, in Civil Case No. 65668 is **REVERSED** and **SET ASIDE**. The latter court is hereby ordered to issue the injunctive relief prayed for by the petitioner Wack Wack Residents Association, Inc. pending determination of the petition for the declaration of **PERMANENT** easement of right of way.

Also, the petitioner is **DIRECTED** to **AMEND** the following: (a) the **TITLE**; and (b) the **AVERMENTS**, in the present petition by disclosing the names of its principals and bringing the action in a representative capacity.

SO ORDERED.^[9]

Without filing a motion for reconsideration, AMALI filed the instant Rule 45 petition for review on *certiorari*.

Issues

AMALI raised the following issues in its Petition:

- (1) whether WWRAI is guilty of forum shopping;
- (2) whether WWRAI is entitled to a temporary restraining order and/or a writ of preliminary injunction;
- (3) whether the CA Decision amounts to a prejudgment of the merits of Civil Case No. 65668 (original petition for easement of right of way);

- (4) whether the CA Decision disturbed the *status quo* prevailing before the filing of the WWRAI petition; and
- (5) whether WWRAI is the real party in interest in this case.^[10]

The Court's Ruling

AMALI's petition is meritorious.

The five issues raised by AMALI have, as core issue, the question of whether or not WWRAI is entitled to enjoin the construction of the AMA Tower pending determination of the original petition for the declaration of temporary and permanent easements of right of way over a portion of Fordham Street.

The Court in *Lukang v. Pagbilao Development Corporation*^[11] reiterated the purpose and grounds for the issuance of a writ of preliminary injunction, *viz.*:

A writ of preliminary injunction is a provisional remedy which is adjunct to a main suit, as well as a preservative remedy issued to maintain the *status quo* of the things subject of the action or the relations between the parties during the pendency of the suit. The purpose of injunction is to prevent threatened or continuous irremediable injury to the parties before their claims can be thoroughly studied and educated. Its sole aim is to preserve the *status quo* until the merits of the case are fully heard. Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are 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.^[12]

Thus, to be entitled to the injunctive writ, the petitioner must show that: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by the act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.^[13]

The grant or denial of the injunctive relief rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence

towards that end involves findings of fact left to the conclusive determination by such court; and the exercise of judicial discretion by such court will not be interfered with, except upon a finding of grave abuse of discretion.^[14]

In the issuance of the injunctive writ, grave abuse of discretion implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.^[15]

Guided by the foregoing principles, the CA erred in finding that the RTC committed grave abuse of discretion in issuing its October 28, 2010 and February 23, 2011 Orders, denying WWRAI's application for the issuance of a temporary restraining order and writ of preliminary injunction.

The Court agrees with the RTC that:

[WWRAI]'s allegation that [its members'^[16]] right to live in a peaceful, quiet and safe environment will be violated in the event that the condominium project of [AMALI] will be erected is untenable. The alleged noise and dust that may be caused by the construction is the natural consequence thereof. However, this annoyance that may be brought by the construction is not permanent in nature but is merely temporary and once the building is completed, [said members'] right to live in a peaceful, quiet and safe environment will be restored without noise and dust.

As to the allegations that [said members'] privacy may be invaded for the reason that they may be photographed or videotaped without their knowledge, these fears are merely speculative and cannot be taken into consideration.

As admitted by [WWRAI's] witness, the construction activity is suspended, hence, there is nothing to restrain x x x. There is no urgent and paramount necessity for the writ to prevent serious damage.^[17]

Indeed, WWRAI was unable to convincingly demonstrate a clear and unmistakable right that must be protected by the injunctive writ. The apprehensions of its members are, as correctly ruled by the RTC, speculative and insufficient to substantiate the element of serious and irreparable damage.

As to the issue of the legality of the construction of AMA Tower, the Resolution^[18] in NBCDO NO. 12-11-93 MAND CITY dated March 29, 2012 issued by the Office of the Secretary of the Department of Public Works and Highways (DPWH), finding "the issuance of Amended Building Permit No. 08-2011-0048 for [AMALI's] proposed thirty-four (34) storey with seven (7) basement level AMA Tower Residences project is in accordance with the provisions of the National Building Code of the Philippines (P.D. 1096) and its IRR x x x"^[19] carries the presumption of regularity as having been issued pursuant to official duty.^[20] The authority to administer and enforce the provisions of the National Building Code, and the power to appoint Building Officials throughout the country, including Metro Manila, pertain to the Secretary of Public