

## EN BANC

[ G.R. No. 205875, June 30, 2015 ]

**LIBERTY BROADCASTING NETWORK, INC., NOW KNOWN AS WITRIBE TELECOMS, INC., PETITIONER, VS. ATLOCOM WIRELESS SYSTEM, INC., RESPONDENT.**

[G.R. No. 208916]

**NATIONAL TELECOMMUNICATIONS COMMISSION, PETITIONER, VS. ATLOCOM WIRELESS SYSTEM, INC., RESPONDENT.**

### DECISION

**VILLARAMA, JR., J.:**

The consolidated petitions before us assail the Decision<sup>[1]</sup> dated June 29, 2012 and Resolution<sup>[2]</sup> dated February 18, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 119868. The CA reversed and set aside the Orders<sup>[3]</sup> dated December 9, 2010 and March 21, 2011 of the Regional Trial Court (RTC) of Quezon City, Branch 95 denying the application for a writ of prohibitory or mandatory injunction in Civil Case No. Q-09-65566.

#### Antecedent Facts

Atlocom Wireless System, Inc. (Atlocom) is a grantee of a legislative franchise under Republic Act (R.A.) No. 8605.<sup>[4]</sup> On October 8, 2003, the National Telecommunications Commission (NTC) issued an Order<sup>[5]</sup> in NTC Case No. 98-158 relative to the application of Atlocom for a Certificate of Public Convenience (CPC), as follows:

**WHEREFORE**, it appearing that applicant is financially and technically capable of undertaking the proposed project and that the operation thereof will promote the interest of the people in Metro Manila, in a proper and suitable manner, the Commission hereby grants to herein applicant ATLOCOM WIRELESS SYSTEM, INC. a Provisional Authority (PA) to install, operate and maintain a Multi-Point Multi-Channel Distribution System [MMDS] in METRO MANILA, subject to the assignment of frequency by the Frequency Management Division of this Commission and to the following -

#### CONDITIONS

x x x x<sup>[6]</sup>

As stated in the above order, the PA shall be valid for a period of eighteen (18) months, or until April 8, 2005. In a letter<sup>[7]</sup> dated April 5, 2004, Atlocom thru its counsel requested for "an extension of time of the allocation of the above-enumerated frequencies and for the period for the construction and installation of the radio stations in the condition no. 2 of the Order." Earlier, Atlocom filed an Application for Permit to Import<sup>[8]</sup> the necessary equipment. Atlocom followed up its application for extension of PA through a letter<sup>[9]</sup> dated June 2, 2005 addressed to Deputy Commissioner Jorge V. Sarmiento. Subsequently, Atlocom filed a Motion for Extension of Provisional Authority<sup>[10]</sup> in NTC Case No. 98-158 on March 3, 2005.

On August 23, 2005, NTC issued Memorandum Circular No. (MC) 06-08-2005<sup>[11]</sup> re-allocating the following bands for broadband wireless access for fixed, nomadic and mobile networks:

- 450 - 470 Mhz
- 1900-1910 MHz
- 1980-1990 MHz
- 2400-2483 MHz
- 2500-2700 MHz
- 3400-3600 MHz
- 5150-5350 MHz
- 5470-5850 MHz
- 10150-10650 MHz

On December 23, 2008, NTC denied Atlocom's motion for extension of PA, citing the re-allocation of MMDS frequencies for Broadband Wireless Access in accordance with MC 06-08-2005 and the unavailability of other alternative frequencies.<sup>[12]</sup>

On September 8, 2009, Atlocom filed in the RTC a Petition<sup>[13]</sup> to enjoin the implementation of MC 06-08-2005 and reinstate the frequencies of Atlocom. It was further prayed that after hearing the court render judgment declaring the said issuance as null and void because NTC unlawfully deprived Atlocom of the right to its assigned frequencies without notice and hearing. The case was docketed as Civil Case No. Q-09-65566.

Liberty Broadcasting Network, Inc. (LBNI), also a grantee of a legislative franchise (R.A. No. 1553, as amended by R.A. No. 4154) for radio and television broadcasting, as well as radio stations for international and domestic communications of all types and services, and holder of a Certificate of Public Convenience and Necessity (CPCN) to operate a radio communications network, was allowed to intervene in the case, joining the defendant NTC in opposing Atlocom's claims. Pursuant to MC 06-08-2005, frequency bands 2535-2545 MHz and 2565-2595 MHz were re-allocated and assigned to LBNI, which covered the 2572-2596 MHz being claimed by Atlocom as allegedly assigned to it.

Per Certification<sup>[14]</sup> dated October 22, 2003 issued by Alvin N. Blanco, Chief, Broadcast Services Division of NTC, the following frequencies were "identified" for Atlocom's MMDS (Metro Manila) system:

- C3 2572 - 2578 Mhz
- D3 2578 - 2584 Mhz

C4 2584 - 2590 Mhz  
D4 2590 - 2596 Mhz

On December 9, 2010, the RTC, after due hearing, issued an Order denying Atlocom's application for a writ of preliminary prohibitory or mandatory injunction. Atlocom filed a motion for reconsideration but it was likewise denied by the RTC under Order dated March 21, 2011.

In a petition for certiorari filed before the CA, Atlocom questioned the validity of the aforesaid orders of the RTC.

In its Resolution<sup>[15]</sup> dated August 12, 2011, the CA denied Atlocom's prayer for the issuance of a writ of preliminary prohibitory injunction and its alternative prayer for a provisional mandatory injunction.

However, in its Decision dated June 29, 2012, the CA ruled in favor of Atlocom and reversed the RTC's denial of application for preliminary injunction. The *fallo* of the decision reads:

**WHEREFORE**, premises considered, the petition is **GRANTED**. The assailed Orders dated December 9, 2010 and March 21, 2011 of the Regional Trial Court (RTC) of Quezon City, Branch 95 are hereby **REVERSED and SET ASIDE**. The plea for the issuance of a Preliminary Prohibitory Injunction is **GRANTED**. Let therefore a writ of preliminary prohibitory injunction issue enjoining Respondent NTC from implementing Memorandum Circular No. 06-08-2005, insofar as the frequencies ranging from 2572-2596 Mhz are concerned and for its Co-Respondent LBNI from using the said frequencies during the pendency of Civil Case No. Q-09-65566 pending before Branch 95 of the Regional Trial Court of Quezon City upon the posting of a bond in the amount of Php 200,000.00 to answer for all damages which they may sustain by reason of the injunction if the RTC should finally decide that petitioner is not entitled thereto. The alternative plea for a writ of Preliminary Mandatory Injunction is **DENIED**.

**SO ORDERED.**<sup>[16]</sup>

LBNI filed a Motion for Reconsideration with *Ad Cautelam* Offer to File Counter-Bond and Addendum to Motion for Reconsideration with *Ad Cautelam* Offer to File Counter-Bond. NTC also filed a Motion for Reconsideration and Supplemental Motion for Reconsideration. The CA denied these motions.

LBNI filed its petition (G.R. No. 205875) in this Court on April 22, 2013. Acting on LBNI's motion for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction, we issued a TRO enjoining the implementation of the writ of preliminary injunction issued by the CA, conditioned upon LBNI's posting of a cash bond in the sum of P300,000.00.

On April 18, 2013, NTC filed its separate petition (G.R. No. 208916) for review from the same CA Decision and Resolution. We ordered the consolidation of the two cases as they arose from the same factual setting, involve the same parties and raise

identical issues.

### **Issues**

The main issues to be resolved are: (1) whether Atlocom complied with the requisites for issuance of a writ of preliminary injunction; and (2) whether LBNI's motion to file counter-bond was correctly denied by the CA.

Specifically, LBNI asserts that the CA erred: (1) in finding that the NTC did not observe due process when it issued MC 06-08-2005 and basing such conclusion on a mistaken notion that the grant of PA is tantamount to a frequency assignment; (2) in failing to recognize that Atlocom has not sufficiently established its claim that it had been assigned the 2572-2596 frequency bands by the NTC; (3) in granting the provisional injunctive writ that in effect pre-judged the civil case pending in the RTC; and (4) in denying LBNI's motion to file counter-bond on the basis of a technical conclusion it is not qualified to make in the first place.

NTC faults the CA in finding that Atlocom's right to due process was violated because it was not notified of the hearing prior to the issuance of MC 06-08-2005, and concluding that Atlocom has a clear and unmistakable property right over the 2572-2596 frequency range.

### **Our Ruling**

The petitions are meritorious.

A preliminary injunction is defined as "[a]n order granted at any stage of an action prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular actor acts."<sup>[17]</sup> It may be a prohibitory injunction, which requires a party to refrain from doing a particular act, or a mandatory injunction, which commands a party to perform a positive act to correct a wrong in the past.<sup>[18]</sup> It is a provisional remedy that a party may resort to in order to preserve and protect certain rights and interests during the pendency of an action.<sup>[19]</sup>

Section 3, Rule 58 of the Rules of Court provides:

*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 nonperformance 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.

The following requisites must be proved before a writ of preliminary injunction will issue: (1) The applicant must have a clear and unmistakable right to be protected, that is, a right *in esse*; (2) There is a material and substantial invasion of such right; (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.<sup>[20]</sup>

The grant or denial of a writ of preliminary injunction is discretionary upon the trial court because the assessment and evaluation of evidence towards that end involve findings of fact left to the said court for its conclusive determination. For this reason, the grant or denial of a writ of preliminary injunction shall not be disturbed unless it was issued with grave abuse of discretion amounting to lack or in excess of jurisdiction.<sup>[21]</sup>

In denying Atlocom's application for a writ of preliminary injunction, the RTC held that Atlocom failed to demonstrate a clear and unmistakable legal right thereto, as evidence showed Atlocom has no more right to be protected considering that its PA had already expired and its application for extension was subsequently denied by the NTC. As to the claim of violation of right to due process, the RTC found that prior to the issuance of MC 06-08-2005, NTC published a notice of public hearing in *The Manila Times*, a newspaper of general circulation, and at the said hearing the participants were given opportunity to be heard through oral arguments and submission of position papers. Atlocom's alternative plea for a writ of mandatory injunction was likewise denied. According to the RTC, ordering the NTC to reinstate Atlocom's frequencies would create an impression that the court had pre-judged the main case by nullifying MC 06-08-2005 as prayed for by Atlocom in its petition.

However, the CA rendered a contrary ruling. The CA underscored the fact that NTC failed to act upon Atlocom's motion for extension for more than three years, and concluded that because of NTC's inordinate delay or refusal to renew the PA granted to Atlocom, the latter was deprived of its right to use the frequencies "granted to it by" the PA. The CA thus held:

In deciding whether to grant an injunction, a court must consider established principles of equity and all the circumstances of the test for issuing an injunction is whether the facts show a necessity for the intervention of equity in order to protect rights cognizable in equity. Here, there are factual and legal justification for issuance of the writ of injunction. To reiterate to the point of being pedantic, petitioner's right to its frequencies is covered by a provisional authority. The provisional authority was withdrawn by MC No. 06-08-2005 without the Respondent NTC acting on petitioner's plea for previous extensions. The propriety for the issuance of MC No. 06-08-2005 is placed in issue on the ground of fairness. Petitioner as the rightful grantee thereof has the right, in the meantime, to enjoin its implementation.

We are not unaware of Our Resolution promulgated on August 12, 2011 denying petitioner's plea for the ancillary remedy of both prohibitory and/or mandatory injunction. Indeed, as of said date, the denial of