

SECOND DIVISION

[G.R. No. 167824, July 02, 2010]

**GERALDINE GAW GUY AND GRACE GUY CHEU, PETITIONERS, VS.
ALVIN AGUSTIN T. IGNACIO, RESPONDENT.**

[G.R. NO. 168622]

**GERALDINE GAW GUY AND GRACE GUY CHEU, PETITIONERS, VS.
THE BOARD OF COMMISSIONERS OF THE BUREAU OF
IMMIGRATION, HON. MARICEL U. SALCEDO, MAYNARDO
MARINAS, RICARDO CABOCHAN AND ELISEO EXCONDE,
RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari*^[1] under Rule 45 of the 1997 Rules of Civil Procedure seeking, among others, to annul and set aside the Decisions dated January 6, 2005^[2] and April 20, 2005^[3] and Resolutions dated March 10, 2005^[4] and June 29, 2005^[5] rendered by the Court of Appeals (CA), reversing and setting aside the Writ of Preliminary Injunction issued by the Regional Trial Court^[6] (RTC), Branch 37, Manila.

The antecedent facts follow.

The father of petitioners Geraldine Gaw Guy and Grace Guy Cheu became a naturalized^[7] Filipino citizen sometime in 1959. The said petitioners, being minors at that time, were also recognized^[8] as Filipino citizens.

Respondent Atty. Alvin Agustin T. Ignacio, filed a Complaint^[9] dated March 5, 2004 for blacklisting and deportation against petitioners Geraldine and Grace before the Bureau of Immigration (BI) on the basis that the latter two are Canadian citizens who are illegally working in the Philippines, petitioners having been issued Canadian passports.

Acting upon the Complaint, respondent Maricel U. Salcedo, Special Prosecutor, Special Task Force of the BI Commissioner, directed the petitioners, through the issuance of a *subpoenae*,^[10] to appear before her and to bring pertinent documents relative to their current immigration status, to which the petitioners objected by filing with the Special Task Force of the BI Commissioner a Comment/Opposition with Motion *Ad Cautelam* to Quash Re: Subpoena^[11] dated 30 April 2004 (*Duces Tecum/Ad Testificandum*), which was eventually denied by respondent Salcedo in an Order^[12] dated May 14, 2004.

Respondent Board of Commissioners (BOC) filed a Charge Sheet^[13] dated June 1, 2004 for Violation of Sections 37 (a) 7, 45 (e) and 45-A of the Philippine Immigration Act of 1940, as amended, which reads as follows:

The undersigned Special Prosecutor charges GRACE GUY CHEU and GERALDINE GAW GUY, both Canadian citizens, for working without permit, for fraudulently representing themselves as Philippine citizens in order to evade immigration laws and for failure to comply with the *subpoena duces tecum/ad testificandum*, in violation of the Philippine Immigration Act of 1940, as amended, committed as follows:

That respondents GRACE GUY CHEU and GERALDINE GAW GUY, knowingly, willfully and unlawfully engage in gainful activities in the Philippines without appropriate permit by working as the Vice-President for Finance & Treasurer and General Manager, respectively, of Northern Islands Company, Inc., with office address at No. 3 Mercury Avenue, Libis, Quezon City;

That both respondents, knowingly, willfully and fraudulently misrepresent themselves as Philippine citizens as reflected in the general Information Sheet of Northern Islands Company, Inc., for 2004, in order to evade any requirement of the Philippine Immigration Laws;

That both respondents, duly served with *subpoenas duces tecum/ad testificandum*, dated April 20, 2004, knowingly, willfully and unlawfully failed to comply with requirements thereof.

CONTRARY TO LAW.

As a remedy, petitioners filed a Petition for *Certiorari* with Damages and a Prayer for Issuance of a Temporary Restraining Order and Preliminary Injunction^[14] dated May 31, 2004 before the RTC of Manila, Branch 37.^[15]

The trial court, after hearing petitioner's application for issuance of a temporary restraining order (TRO) and writ of preliminary injunction, issued an Order^[16] dated June 28, 2004, the dispositive portion of which reads:

WHEREFORE, premises considered, the application for temporary restraining order is hereby GRANTED. The respondents and all persons acting in their behalf and those under their instructions are directed to cease and desist from continuing with the deportation proceedings involving the petitioners. In the meantime set the case for hearing on preliminary injunction on July 5 and 6, 2004, both at 2:00 o'clock in the afternoon and the respondents are directed to show cause why writ of

preliminary injunction should not issue.

SO ORDERED.

On July 5, 2004, public respondents filed their Answer^[17] and on July 13, 2004, filed a Supplement (To the Special and Affirmative Defenses/Opposition to the Issuance of a Writ of Preliminary Injunction).^[18] The parties were then directed to file their respective memoranda as to the application for issuance of a writ of preliminary injunction and public respondents' special and affirmative defenses. On July 16, 2004, public respondents as well as the petitioners,^[19] filed their respective Memoranda.^[20] On the same day, respondent Atty. Ignacio filed his Answer^[21] to the petition.

In an Order^[22] dated July 19, 2004, the trial court granted the application for preliminary injunction enjoining public respondents from further continuing with the deportation proceedings. The Order reads, in part:

In view of the foregoing, the Court finds that, indeed, there exists a pressing reason to issue a writ of preliminary injunction to protect the rights of the petitioners pending hearing of the main case on the merits and unless this Court issues a writ, grave irreparable injury would be caused against the petitioners.

WHEREFORE, premises considered, the application for the Writ of Preliminary Injunction is hereby GRANTED. The respondents and all persons acting on their behalf and those under their instructions are directed to cease and desist from continuing with the deportation proceedings involving the petitioners during the pendency of the instant case. The petitioners are directed to post a bond in the amount of P50,000.00 to answer for whatever damages that may be sustained by the respondent should the court finally resolve that the petitioners are not entitled thereto.

SO ORDERED.

As a consequence, public respondents, on September 10, 2004, filed a Petition for *Certiorari* with Prayer for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction^[23] before the CA^[24] and, on September 17, 2004, respondent Atty. Ignacio filed a Petition for *Certiorari*,^[25] also with the CA.^[26] Both petitions prayed for the nullification of the Orders dated June 28, 2004 and July 19, 2004 issued by the RTC in Civil Case No. 04-110179 and for the dismissal of the petition therein. Later on, petitioner Geraldine filed a Motion to Consolidate both petitions.

On January 6, 2005, the Ninth Division of the CA granted the petition filed by respondent Atty. Ignacio and annulled the writ of preliminary injunction issued by the trial court, the dispositive portion of the Decision^[27] reads:

WHEREFORE, the instant petition is GRANTED and the Order of the Regional Trial Court, Branch 37, Manila, dated July 19, 2004, is hereby ANNULLED and SET ASIDE.

SO ORDERED.

On January 21, 2005, petitioners filed a Motion for Reconsideration.^[28]

On March 1, 2005, petitioners reiterated^[29] their prayer for the consolidation of the petitions in the Eighth and Ninth Divisions. In its Resolution^[30] dated March 10, 2005, the CA Ninth Division denied petitioners' Motion for Reconsideration.

Hence, petitioners filed before this Court a Petition for Review on *Certiorari*^[31] dated March 31, 2005 praying for the reversal of the Decision rendered by the CA's Ninth Division, which is now docketed as G.R. No. 167824.

Thereafter, the CA's Eighth Division rendered its own Decision^[32] dated April 29, 2005 granting the petition therein and nullifying the Orders dated June 28 and July 19, 2004 in Civil Case No. 04-110179, the dispositive portion of which reads as follows:

WHEREFORE, finding the instant petition impressed with merit and in accordance with our decision in CA-G.R. SP No. 86432, the same is GIVEN DUE COURSE and is GRANTED. The assailed Orders of the respondent court dated 28 June and 19 July 2004 are hereby NULLIFIED and SET ASIDE.

SO ORDERED.

Petitioners filed their Motion for Reconsideration^[33] from the said Decision, which the CA denied in its Resolution^[34] dated June 21, 2005.

Thus, petitioners filed before this Court a Petition for Review on *Certiorari*^[35] dated July 12, 2005 seeking to reverse and set aside the said Decision and Resolution rendered by the Eighth Division of the CA and is now docketed as G.R. No. 168622. In its Resolution^[36] dated August 10, 2005, the Court dismissed the said petition and said dismissal, despite petitioners' motion for reconsideration,^[37] was affirmed in a Resolution^[38] dated October 17, 2005. This Court, however, upon another motion for reconsideration^[39] filed by the petitioners, reinstated the petition and ordered its consolidation with G.R. No. 167824.^[40]

On September 7, 2007, a Manifestation^[41] was filed informing this Court that petitioner Grace Guy Cheu died intestate on August 12, 2007 in the United States of America.

Petitioners raised the following grounds in their Consolidated Memorandum^[42]

dated March 27, 2007:

I.

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ERRED IN HOLDING THAT THE LOWER COURT HAS NO JURISDICTION OVER CIVIL CASE NO. 04-110179 AND ISSUE A WRIT OF PRELIMINARY INJUNCTION THEREIN CONSIDERING THAT THE INSTANT CASE IS AN EXCEPTION TO THE RULE ON PRIMARY JURISDICTION DOCTRINE AND WARRANTS PETITIONERS' IMMEDIATE RESORT TO JUDICIAL INTERVENTION.

A.

CONSIDERING THAT PROOF OF PETITIONERS' PHILIPPINE CITIZENSHIP IS SUBSTANTIAL, PETITIONERS ARE ALLOWED UNDER THIS HONORABLE COURT'S RULING IN *BID V. DELA ROSA*, SUPRA, TO SEEK INJUNCTIVE RELIEF FROM THE REGIONAL TRIAL COURT TO ENJOIN THE DEPORTATION PROCEEDINGS CONDUCTED AGAINST THEM.

B.

LIKEWISE, CONSIDERING THAT PETITIONERS STAND TO SUFFER GRAVE AND IRREPARABLE INJURIES SHOULD THE DEPORTATION PROCEEDINGS AGAINST THEM BE ALLOWED TO CONTINUE, PETITIONERS ARE ALLOWED UNDER THE LAW TO IMMEDIATELY SEEK JUDICIAL RELIEF DESPITE THE PENDENCY OF THE ADMINISTRATIVE PROCEEDINGS.

II.

FURTHER, IT IS RESPECTFULLY SUBMITTED THAT THE RULING OF THIS HONORABLE COURT IN *DWIKARNA V. DOMINGO*, 433 SCRA 748 (2004) DID NOT STRIP THE LOWER COURT OF ITS AUTHORITY TO ENTERTAIN THE PETITION IN CIVIL CASE NO. 04-110179 AND TO ISSUE A WRIT OF PRELIMINARY INJUNCTION IN THE AFORESAID CASE.

III.

EVEN IF THE RULING OF THIS HONORABLE COURT IN *DWIKARNA V. DOMINGO*, SUPRA, DID STRIP THE LOWER COURT OF ITS JURISDICTION IN *BID V. DELA ROSA*, SUPRA, TO ENJOIN DEPORTATION PROCEEDINGS, THE RULING CAN ONLY HAVE PROSPECTIVE EFFECT.

Basically, petitioners argue that the doctrine of primary jurisdiction, relied upon by the CA in its decision, does not apply in the present case because it falls under an exception. Citing *Board of Commissioners (CID) v. Dela Rosa*,^[43] petitioners assert that immediate judicial intervention in deportation proceedings is allowed where the