

## SECOND DIVISION

[ G.R. No. 174569, September 17, 2008 ]

**CHINA BANKING CORPORATION, SPOUSES JOEY & MARY JEANNIE CASTRO AND SPOUSES RICHARD & EDITHA NOGOY, PETITIONERS, VS. BENJAMIN CO, ENGR. DALE OLEA AND THREE KINGS CONSTRUCTION & REALTY CORPORATION, RESPONDENTS.**

### DECISION

#### **CARPIO MORALES, J.:**

Petitioner China Banking Corporation sold a lot located at St. Benedict Subdivision, Sindalan, San Fernando, Pampanga, which was covered by Transfer Certificate of Title (TCT) No. 450216-R to petitioner-spouses Joey and Mary Jeannie Castro (the Castro spouses). It sold two other lots also located in the same place covered by TCT Nos. 450212-R and 450213-R to petitioner-spouses Richard and Editha Nogoy (the Nogoy spouses).

The lots of the Castro spouses and the Nogoy spouses are commonly bound on their southeastern side by Lot No. 3783-E, which is covered by TCT No. 269758-R in the name of respondent Benjamin Co (Co) and his siblings.

Co and his siblings entered into a joint venture with respondent Three Kings Construction and Realty Corporation for the development of the Northwoods Estates, a subdivision project covering Lot No. 3783-E and adjacent lots. For this purpose, they contracted the services of respondent, Engineer Dale Olea.

In 2003, respondents started constructing a perimeter wall on Lot No. 3783-E.

On November 28, 2003, petitioners, through counsel, wrote respondents asking them to stop constructing the wall, and remove all installed construction materials and restore the former condition of Lot No. [3]783-E which they (petitioners) claimed to be a road lot.[1] They also claimed that the construction obstructed and closed the only means of ingress and egress of the Nogoy spouses and their family, and at the same time, caved in and impeded the ventilation and clearance due the Castro spouses' residential house.[2]

Petitioners' demand remained unheeded, prompting them to file before the Regional Trial Court (RTC) of San Fernando, Pampanga a complaint,[3] docketed as Civil Case No. 12834, for injunction, restoration of road lot/right of way and damages with prayer for temporary restraining order and/or writ of preliminary injunction.

Before respondents filed their Answer,[4] petitioners filed an Amended Complaint,[5] alleging that the construction of the perimeter wall was almost finished and thus

modifying their prayer for a writ of preliminary injunction to a writ of preliminary mandatory injunction, viz:

WHEREFORE, it is respectfully prayed of this Honorable Court that:

- A. Before trial on the merits, a temporary restraining order be issued immediately restraining the defendants from doing further construction of the perimeter wall on the premises, and thereafter, a writ of preliminary **mandatory** injunction be issued enjoining the defendants from perpetrating and continuing with the said act and directing them jointly and severally, to restore the road lot, Lot 3783-E to its previous condition.

x x x x <sup>[6]</sup> (Underscoring in the original; emphasis supplied)

After hearing petitioners' application for a writ of preliminary mandatory injunction, Branch 44 of the San Fernando, Pampanga RTC denied the same, without prejudice to its resolution after the trial of the case on the merits, in light of the following considerations:

After a judicious evaluation of the evidence, the Commissioner's Report on the Conduct of the Ocular Inspection held on February 14, 2004, as well as the pleadings, the Court is of the opinion and so holds that a writ of preliminary injunction should not be issued at this time. Plaintiffs have not clearly shown that their rights have been violated and that they are entitled to the relief prayed for and that irreparable damage would be suffered by them if an injunction is not issued. Whether lot 3783-E is a road lot or not is a factual issue which should be resolved after the presentation of evidence. This Court is not inclined to rely only on the subdivision plans presented by plaintiffs since, as correctly argued by defendants, the subdivision plans do not refer to lot 3783-E hence are not conclusive as to the status or classification of lot 3783-E. This court notes further that Subdivision Plan Psd-03-000577 of Lot 3783 from which the other subdivision plans originates [sic] does not indicate lot 3783-E as a road lot.

Even the physical evidence reveals that lot 3783-E is not a road lot. The Court noticed during the ocular inspection on February 14, 2004, that there is a PLDT box almost in front of lot 3783-E. There is no visible pathway either in the form of a beaten path or paved path on lot 3783-E. Visible to everyone including this court are wild plants, grasses, and bushes of various kinds. Lot 3783-E could not have been a road lot because Sps. Nogoy, one of the plaintiffs, even built a structure on lot 3783-E which they used as a coffin factory.

Plaintiffs failed to prove that they will be prejudiced by the construction of the wall. The ocular inspection showed that they will not lose access to their residences. As a matter of fact, lot 3783-E is not being used as an access road to their residences and there is an existing secondary road within St. Benedict Subdivision that serves as the main access road to the highway. With respect to the blocking of ventilation and light of the residence of the Sps. Castro, suffice it to state that they are not deprived of light and ventilation. The perimeter wall of the defendants is situated

on the left side of the garage and its front entrance is still open and freely accessible.

This is indeed an issue of fact which should be ventilated in a full blown trial, determinable through further presentation of evidence by the parties. x x x

x x x x

WHEREFORE, premises considered, plaintiffs' application for the issuance of a writ of preliminary mandatory injunction is denied without prejudice to its resolution after the trial of the case on the merits.<sup>[7]</sup> (Underscoring supplied)

Their Motion for Reconsideration<sup>[8]</sup> having been denied, petitioners filed a petition for certiorari<sup>[9]</sup> before the Court of Appeals which dismissed the same<sup>[10]</sup> and denied their subsequent Motion for Reconsideration.<sup>[11]</sup>

Hence, the petitioners filed the present petition,<sup>[12]</sup> faulting the Court of Appeals in

I.

. . . DECID[ING] AND RESOLV[ING] A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE BASIC GOVERNING LAW (*PRESIDENTIAL DECREE NO. 1529*) AND APPLICABLE DECISIONS OF THIS HONORABLE COURT.

II.

. . . PROMOTING THE LOWER COURT'S RATIOCINATION THAT PETITIONERS ARE SEEKING THE ESTABLISHMENT OF AN EASEMENT OF RIGHT OF WAY, WHEN THEY ARE CLAIMING THE ENFORCEMENT OF THE STATUTORY PROHIBITION AGAINST CLOSURE OR DISPOSITION OF AN ESTABLISHED ROAD LOT.

III.

. . . SANCTION[ING] THE LOWER COURT'S PATENT GRAVE ABUSE OF DISCRETION IN PERFUNCTORILY DENYING PETITIONERS' APPLICATION FOR WRIT OF PRELIMINARY INJUNCTION.<sup>[13]</sup>

It is settled that the grant of a preliminary mandatory injunction rests on the sound discretion of the court, and the exercise of sound judicial discretion by the lower court should not be interfered with except in cases of manifest abuse.<sup>[14]</sup>

It is likewise settled that a court should avoid issuing a writ of preliminary mandatory injunction which would effectively dispose of the main case without trial.<sup>[15]</sup>

In the case at bar, petitioners base their prayer for preliminary mandatory injunction on Section 44 of Act No. 496 (as amended by Republic Act No. 440), Section 50 of Presidential Decree 1529, and their claim that Lot No. 3783-E is a road lot.