

## SECOND DIVISION

**[ G.R. No. 172426, October 17, 2008 ]**

**AIR TRANSPORTATION OFFICE, PETITIONER, VS. HONORABLE COURT OF APPEALS (EIGHTEENTH DIVISION) AND BERNIE G. MIAQUE, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

In this Petition for Certiorari and Mandamus, petitioner assails the Resolutions dated April 21, 2006<sup>[1]</sup> and May 3, 2006<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 01672 and seeks to compel the Court of Appeals to lift the temporary restraining order (TRO) it issued.

This case involved certain parcels of land (concession area) identified as Lot No. 3124-B-4 covered by Transfer Certificate of Title (TCT) No. T-16508; Lot No. 3136-B covered by TCT No. 13666; and Lot No. 3264-A declared under Tax Declaration PIN 139-05-019-02-015.<sup>[3]</sup> The antecedent facts are as follows:

On July 2, 2001, private respondent Bernie G. Miaque filed an action for enforcement of contract, injunction with prayer for TRO and/or preliminary injunction and damages against petitioner alleging that petitioner was making improvements in the concession area it had leased to him. This case was raffled to Branch 33 of the Regional Trial Court (RTC) of Iloilo City and docketed as Civil Case No. 01-26825.

On August 8, 2001, the RTC nullified the concession permit issued by Air Transportation Office (ATO) Area Manager Edmundo Gerochi to private respondent, who then sought a reconsideration, but it was denied in the RTC's Order<sup>[4]</sup> dated April 15, 2002. Accordingly, the Amended Order<sup>[5]</sup> dated August 8, 2001 had become final and executory.

Sometime in June 2004, however, private respondent resumed business over the concession area despite petitioner's protest and even operated therein a carwash service, which was not included in the concession permit. Consequently, petitioner sent a demand letter<sup>[6]</sup> to private respondent to vacate the concession area and to return possession of the same, but said demand proved futile.

On October 25, 2004, petitioner filed an Amended Complaint<sup>[7]</sup> for unlawful detainer against private respondent, docketed as Civil Case No. 04-344 before the Municipal Trial Court in Cities (MTCC) of Iloilo City. Both parties admitted that on January 18, 1989, ATO Area Manager Gerochi issued to private respondent a concession permit to operate a paid parking space and taxicab and limousine service in the Iloilo City Airport for a period of 15 years. However, petitioner pointed out that by its terms,

the concession permit<sup>[8]</sup> had already expired on January 18, 2004.

In a Decision<sup>[9]</sup> dated January 9, 2006, the MTCC ordered private respondent to immediately vacate and deliver to petitioner the concession area occupied by private respondent and to remove and demolish all buildings, structures and other improvements introduced thereon.<sup>[10]</sup> Petitioner moved for the execution of said decision on January 31, 2006<sup>[11]</sup> while private respondent filed a notice of appeal on February 20, 2006.

On February 28, 2006, the MTCC ordered the issuance<sup>[12]</sup> of the writ of execution pending appeal. It also later gave due course to private respondent's notice of appeal and elevated the records to the RTC on March 2, 2006.<sup>[13]</sup>

Upon failure of private respondent to file a supersedeas bond and to deposit the accruing rentals pending appeal, a Writ of Execution<sup>[14]</sup> was issued on March 14, 2006, followed by a Notice to Vacate<sup>[15]</sup> dated March 21, 2006.

On March 31, 2006, the Sheriff implemented the writ of execution, and delivered complete possession of the premises to petitioner, as per Delivery of Possession<sup>[16]</sup> and Sheriff's Return of Service<sup>[17]</sup> dated April 3, 2006.

On April 3, 2006, private respondent filed an Urgent Motion to Nullify Writ of Execution and Notice to Vacate<sup>[18]</sup> in the RTC of Iloilo City, Branch 23. He also filed an Urgent Supplemental Motion<sup>[19]</sup> for the issuance of a TRO and/or writ of preliminary injunction to restrain the implementation of the writ of execution. Pending the hearing of the Urgent Motion, the Supplemental Motion was denied by the RTC in its Order<sup>[20]</sup> dated April 18, 2006.

On April 20, 2006, private respondent filed with the Court of Appeals a Petition for Certiorari with Prayer for Issuance of TRO and/or Preliminary Injunction,<sup>[21]</sup> arguing that he was deprived of his constitutional right to due process and claiming that there was already a novation of judgment. This case was docketed as CA-G.R. CEB-SP No. 01672.

In its Resolution dated April 21, 2006, the Court of Appeals issued the assailed TRO,<sup>[22]</sup> restraining the implementation of the writ of execution. The Court of Appeals also clarified in its Resolution dated May 3, 2006, that the *status quo ante* to be observed in the TRO is the last peaceable possession of the premises before the decision was rendered in the unlawful detainer case. On May 5, 2006, private respondent took possession of the subject premises.

Petitioner now comes before us contending that:

THE RESPONDENT Honorable COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING A TRO TO RESTRAIN THE REGIONAL TRIAL COURT (BRANCH 23) OF ILOILO CITY FROM "IMPLEMENTING" AND "ENFORCING" THE FEBRUARY 28, 2006 WRIT OF EXECUTION OF THE MUNICIPAL TRIAL COURT IN CITIES (BRANCH 3), ILOILO CITY WHEN

THE SAME HAD BEEN ALREADY FULLY IMPLEMENTED AND WAS PROPERLY ISSUED PURSUANT TO SECTION 19, RULE 70 OF THE RULES OF COURT.<sup>[23]</sup>

Essentially, the issue to be resolved is the propriety of the issuance by the Court of Appeals of the TRO, restraining the RTC from implementing the writ of execution issued by the MTCC in the unlawful detainer case.

At the outset, we must stress that a perusal of the TRO issued by the Court of Appeals on April 21, 2006 reveals that it was only for an unextendible period of 60 days, unless sooner terminated by a court order. Hence, said TRO was automatically lifted upon the expiration of the 60-day period. Accordingly, petitioner's prayer before us to lift the TRO issued by the Court of Appeals is now moot and academic.

However, we agree with the petitioner's contention that the Court of Appeals imprudently issued the TRO dated April 21, 2006. To begin with, the writ of execution had already been enforced and private respondent was evicted already from the premises as petitioner was placed in possession of the premises, as per the Delivery of Possession dated March 31, 2006 and Sheriff's Return of Service dated April 3, 2006. Case law teaches that a temporary restraining order will not issue if the act sought to be enjoined is a *fait accompli*.<sup>[24]</sup>

What is more, this Court has consistently held that a judgment in favor of plaintiff in an unlawful detainer suit is immediately executory to prevent further damage to him arising from the loss of possession of his property.<sup>[25]</sup> Conformably to Section 19,<sup>[26]</sup> Rule 70 of the Rules of Court, concurrence of all the following requisites must be present to stay the immediate execution of judgment pending appeal in ejectment cases, to wit: (a) defendant perfects his appeal, (b) he files a supersedeas bond, and (c) he periodically deposits the rentals falling due during the pendency of the appeal. Failure of the defendant to comply with any of these requirements is a ground for the outright execution of judgment despite appeal, the duty of the Court in this respect being mandatory and ministerial.<sup>[27]</sup>

It was therefore the ministerial duty of the MTCC to issue in this case the writ of execution upon failure of private respondent to file a supersedeas bond and to deposit the accruing rentals. By issuing the TRO enjoining the eviction of private respondent, the Court of Appeals allowed him to extend his stay in the premises despite the mandatory provision of Section 19, Rule 70 of the Rules of Court.<sup>[28]</sup>

From the foregoing, in our view, it is grave abuse of discretion on the part of the Court of Appeals to restrain the implementation of the writ of execution based on the circumstances obtaining in this case. Indeed, petitioner has shown to this Court that this case falls within the exception to the rule that a motion for reconsideration is required prior to the filing of the instant petition. The TRO issued by the Court of Appeals is a patent nullity as it clearly contravenes the express provisions of Section 19, Rule 70 of the Rules of Court.

In its petition, petitioner further prays for the following reliefs: (1) the dismissal of the certiorari case in the Court of Appeals; (2) the issuance of a temporary restraining order and/or writ of preliminary injunction restraining the Court of