

THIRD DIVISION

[G.R. NO. 159245, August 31, 2006]

**GV DIVERSIFIED INTERNATIONAL, INCORPORATED,
PETITIONER, VS. COURT OF APPEALS, CITY OF CAGAYAN DE
ORO, AND MAYOR VICENTE Y. EMANO, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This special civil action for certiorari seeks to annul the Decision,^[1] dated January 7, 2003, of the Court of Appeals in CA-G.R. SP No. 72302. The said Decision set aside the Writ of Preliminary Injunction^[2] issued on July 12, 2002 by the Regional Trial Court of Cagayan de Oro City, Branch 41, in Civil Case No. 2002-175.

The pertinent facts are as follows:

On March 18, 1998, respondent City of Cagayan de Oro, through its then Mayor, Pablo P. Magtajas, entered into a Build and Transfer Contract^[3] with petitioner GV Diversified International, Inc. Under the said contract, petitioner undertook to design, finance, and construct the City's South Diversion Road and PCDG Cargo Bridge Project for ₱635,999,929.79 payable in US dollars at the exchange rate of ₱37.50 to a dollar.

Pursuant to the contract and upon petitioner's request,^[4] the City released ₱23,000,000 to cover the expenses for topographic surveys, feasibility studies, design development and preliminary engineering.

However, before petitioner could continue with the implementation of the contract, respondent Vicente Y. Emano, was declared winner in the election for mayor during the May 1998 elections. Mayor Emano created a special committee to investigate the alleged irregular release of the amount of ₱23,000,000 to petitioner. The special committee found the contract grossly disadvantageous to the government.

Thus, in December 2000, an amended Build and Transfer Contract was forged between petitioner and the City. The amendment retained the project cost of ₱635,999,929.79 less the initial payment of ₱23,000,000, but made it payable in Philippine pesos instead of US dollars.

Meanwhile, petitioner assigned all its rights, obligations, and interests in the original and amended contracts in favor of White Horse Trading Development and Construction (White Horse, for brevity) for a consideration of ₱25,000,000. The City accordingly passed an ordinance confirming the said assignment. Thereafter, the City sent a notice to White Horse to commence work.

While work on the project was underway, White Horse failed to comply with the cash

consideration as agreed upon under the deed of assignment. Hence, petitioner rescinded the assignment with due notice to the City.

However, Mayor Emano refused to recognize the same and instead, rescinded the amended contract between petitioner and the City. Forthwith, the City caused the publication of invitation to licensed contractors to pre-qualify and bid for the same project.

Claiming that the rescission of the amended contract was unlawful, petitioner filed with the Regional Trial Court of Cagayan de Oro City a Complaint for specific performance, injunction and damages against the City. In its complaint, petitioner prayed that a temporary restraining order be immediately issued against the commission of the acts complained of, including the opening of the sealed bids for the project.

On June 25, 2002, Branch 20 of the RTC of Cagayan de Oro City issued the temporary restraining order. The hearing on the application for preliminary injunction was set on June 28, 2002.

Prior to the hearing on the application for preliminary injunction, the City filed a Motion to Dismiss the application for TRO and/or preliminary injunction and to quash the TRO already issued. The City alleged that under Presidential Decree No. 1818, the RTC had no jurisdiction to issue a TRO. It also lamented the lack of notice and hearing before the issuance of the questioned TRO.

On July 4, 2002, the presiding judge voluntarily inhibited himself and the case was re-raffled to Branch 41 of the RTC. In a Resolution dated July 9, 2002, the RTC denied the motion to dismiss the application for TRO and/or preliminary injunction and to quash the TRO already issued.

On July 12, 2002, the RTC released an Order for the issuance of a Writ of Preliminary Injunction. We quote the decretal part of the Order:

WHEREFORE, to maintain the status quo, let [a] Writ of Preliminary Injunction be issued, upon filing of the bond by the plaintiffs as required by the Rules of Court in the sum of ONE MILLION PESOS (P1,000,000.00). Directing the defendants, from the commission of the acts complained of and for opening the sealed bids for the South Diversion Road and PCDG Cargo Bridge Project on July 17, 2002 or any other dates, under the defendants' "Invitation to Prequalify and to Bid" and other or further documents issued in relation thereto and to desist from performing any further act that may in one way or the other contravene the tenor of this Order.

SO ORDERED. [5]

The City timely filed an Urgent Omnibus Motion for Reconsideration. [6] However, the RTC denied it for lack of merit.

Aggrieved, the City filed with the Court of Appeals on August 19, 2002 a petition for certiorari and prohibition with application for TRO and/or preliminary injunction seeking to set aside the said RTC Order dated July 12, 2002.

In its Resolution^[7] of August 27, 2002, the Court of Appeals issued a TRO and set the hearing for the issuance of a writ of preliminary injunction on September 10, 2002.

After hearing both parties, the Court of Appeals rendered a Decision on January 7, 2003 lifting the writ of preliminary injunction issued by the RTC. The dispositive part of its Decision reads:

WHEREFORE, the petition is GRANTED. The injunctive writ issued pursuant to the July 12, 2002 order of respondent judge is hereby LIFTED and SET ASIDE.

SO ORDERED.^[8]

Not satisfied with the said Decision, petitioner filed a Motion for Reconsideration, which the appellate court denied for lack of merit in its Resolution of May 15, 2003.

Hence, the instant special civil action for certiorari raising as sole issue:

Whether the City may be stopped by preliminary prohibitory injunction from awarding through public bidding the completion of the South Diversion Road and PCDG Cargo Bridge Project.^[9]

Stated otherwise, the issue is whether the Court of Appeals committed grave abuse of discretion in lifting the preliminary injunction issued by the RTC?

Petitioner contends that the amended contract is the law between the parties, but the City unilaterally rescinded the same without observing the stipulated procedure for termination. Petitioner avers that the questioned writ of preliminary injunction was sought and issued in connection with a legal question.

Relying on our rulings in *Malaga v. Penachos, Jr.*,^[10] *Genaro R. Reyes Construction, Inc. v. Court of Appeals*,^[11] and *Philippine Ports Authority v. Court of Appeals*,^[12] petitioner takes exception to the application of P.D. No. 1818. First, it points out that what P.D. No. 1818 proscribes is the issuance of preliminary injunction delaying an infrastructure project of the government. Petitioner claims the preliminary injunction issued by the RTC precisely allowed continuation of work on the project.

Second, petitioner claims P.D. No. 1818 does not apply when the implementation of the project has started, as is allegedly the case herein. Third, petitioner avers P.D. No. 1818 is inapplicable as there was, allegedly, grave abuse of discretion on the part of the government authority being enjoined.

However, respondents City and its mayor counter that petitioners should have filed a petition for review under Rule 45 on pure questions of law. At any rate, they maintain that the Court of Appeals correctly ruled, based on Republic Act No. 8975,^[13] that the RTC committed grave abuse of discretion when it issued the TRO and writ of preliminary injunction, which staved off the completion of the South Diversion Road and PCDG Cargo Bridge Project.