

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 182042 **July 27, 2011**

THUNDER SECURITY AND INVESTIGATION AGENCY/LOURDES M. LASALA, Petitioner,
vs.

NATIONAL FOOD AUTHORITY (REGION I) and NFA REGIONAL BIDS AND AWARDS COMMITTEE (REGION I), Respondents.

D E C I S I O N

VILLARAMA, JR., J.:

Before this Court is a petition¹ for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse the Decision² dated July 18, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 93642, which set aside the Orders³ dated August 27, 2003 and December 1, 2005 of the Regional Trial Court (RTC) of San Fernando City, La Union, Branch 66 in Civil Case No. 6846.

The facts are as follows:

Sometime in September 2002, petitioner Thunder Security and Investigation Agency, owned and operated by petitioner Lourdes M. Lasala as sole proprietor, entered into a Contract for Security Services⁴ with respondent National Food Authority (NFA), Region I. The contract provided that Thunder Security will provide 132 security guards to safeguard the NFA's personnel, offices, facilities and properties in Region I for a period of one year from September 15, 2002 to September 15, 2003.

Subsequently, Republic Act (R.A.) No. 9184⁵ was enacted on January 10, 2003, and took effect on January 26, 2003. Said law expressly repealed, among others, Executive Order (E.O.) No. 40, Series of 2001⁶ which governed the bidding procedure of service contracts in the Government.

Since petitioner's contract with the NFA was about to expire on September 15, 2003, the NFA caused the publication of an Invitation to Apply for Eligibility and to Bid on May 11 and 18, 2003, intended for all private security agencies.⁷ Petitioner paid the bidding fee of ₱ 1,000.00 on May 21, 2003 to signify its intention to participate in the bidding process. However, on June 9, 2003, the NFA, through Assistant Regional Director Victoriano Molina, chairman of respondent NFA-Regional Bids and Awards Committee (NFA-RBAC), notified petitioner to submit the required documents not later than June 19, 2003 in order to qualify for the bidding.⁸ On June 26, 2003, the NFA-RBAC informed petitioner that its application to bid had

been rejected due to its failure to submit the required documents.⁹ Aggrieved, petitioner sent a letter of protest to the NFA on July 10, 2003, contending that until the Implementing Rules and Regulations (IRR) of R.A. No. 9184 can be promulgated, no bidding should take place.¹⁰ Notwithstanding, respondents rejected petitioner's application. Respondents defended their position, citing an instruction coming from then NFA Administrator Arthur C. Yap which directed that in the absence of the said IRR and due to the exigency of the service, respondents' projects would be temporarily guided by the provisions of E.O. No. 40, among others, provided the same are consistent with R.A. No. 9184.¹¹

Unfazed, petitioner filed before the RTC a Petition¹² for Prohibition and Preliminary Injunction, with a prayer for the issuance of a Temporary Restraining Order (TRO) plus Damages, seeking, among others, to enjoin respondents from awarding the contract to another security agency. On August 8, 2003, the RTC issued a TRO against respondents.¹³ Correlatively, in its Order¹⁴ dated August 27, 2003, the RTC granted the writ of preliminary injunction in favor of petitioner and directed respondents to desist from terminating petitioner's services until further orders from the RTC. The RTC held that the composition and the orders of the NFA-RBAC were void because the IRR of R.A. No. 9184 has not yet been promulgated. The RTC also found that no observers from the private sector were present in the bidding process as required by law. The RTC ordered:

WHEREFORE, premises considered[,] let [a] Writ of Preliminary Injunction [be issued] against respondents National Food Authority Region I and the Regional Bid and Awards Committee (RBAC) enjoining and restraining said respondents and all persons acting in their behalf from awarding the contract for security services in NFA Region I and from terminating the services of petitioner until further orders from the Court, upon payment of an Injunction Bond in the amount of Php50,000.00 in the name of the respondents to answer for any and all damages which the respondents may suffer in the event that the Court should finally decide that petitioner is not entitled to the issuance thereof.

Let the Pre-trial Conference of this case be set on September 22, 2003 at 2:00 o'clock in the afternoon.

SO ORDERED.¹⁵

Respondents filed a Motion for Reconsideration¹⁶ on September 23, 2003, contending that per Minutes of the Meeting¹⁷ for public bidding held on July 16, 2003, three independent observers were actually present, namely, Floriano S. Gallano, Jenny Lilan and Antonita S. Hagad. On October 8, 2003, IRR Part A¹⁸ (IRR-A) of R.A. No. 9184 also took effect. Nonetheless, the RTC denied respondents' motion for reconsideration in its Order¹⁹ dated December 1, 2005. Thus, respondents sought recourse from the CA by way of certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, charging the RTC of grave abuse of discretion in the issuance of the said orders.²⁰

On July 18, 2007, the CA granted the petition. It held that the RTC gravely abused its discretion when it issued the writ of preliminary injunction against respondents despite the utter lack of basis and justification for its issuance. The CA highlighted that while IRR-A of R.A. No. 9184 took effect on October 8, 2003,²¹ and thus could not have been applied by the RTC in its August 27, 2003 Order, its failure to consider the said IRR-A in resolving respondents' motion for reconsideration amounted to grave abuse of discretion. The CA added that contrary to the trial court's ruling, there were three observers present during the bidding process, as shown by the Minutes of the Meeting for public bidding held on July 16, 2003. The CA further opined that petitioner did not appear to possess a clear legal right to enjoin the awarding of the contract considering that petitioner's right to participate in the bidding was itself dubious as petitioner failed to submit the necessary documents required by respondents. However, the CA clarified that its decision was merely focused on the issue of the impropriety of the issuance of the writ of preliminary injunction and not on the issues of the propriety of the award of the contract and damages. Thus, the CA held that the latter issues should still be heard by the RTC.²² The dispositive portion of the CA decision reads:

WHEREFORE, in view of the foregoing, the instant PETITION is hereby GRANTED. The Orders issued by Branch 66 of the Regional Trial Court of San Fernando City, La Union dated August 27, 2003 and December 1, 2005 in Civil Case No. 6846 are hereby SET ASIDE.

SO ORDERED.²³

Petitioner filed a Motion for Reconsideration²⁴ but the CA denied the same in its Resolution²⁵ dated March 5, 2008.

Hence, this petition which raised the following issues:

1. Whether the Court of Appeals committed a reversible error when it held that the respondents did not err in applying E.O. 40 in the conduct of the bidding[;]
2. Whether the Court of Appeals committed a reversible error when it held that there was no irregularity attending the questioned bidding[; and]
3. Whether the Court of Appeals committed a reversible error when it reversed the Orders of [the RTC] granting injunctive relief to herein petitioner[.]²⁶

Petitioner emphasizes that R.A No. 9184, which expressly repealed E.O. No. 40, was already in force at the time the bidding was conducted in this case on July 16, 2003; hence, it was error for the NFA and the NFA-RBAC to conduct the public bidding in accordance with E.O. No. 40. Petitioner also abandons its initial stance regarding the need for implementing rules and regulations, and now argues that even without its IRR, R.A. No. 9184 can be understood and enforced. Petitioner adds that there is no provision of law or jurisprudence which requires that there must first be an IRR before a law takes effect, and adds that NFA Administrator Arthur C. Yap and his subordinates cannot suspend the operation of R.A. No. 9184 and order that bidding

be conducted in accordance with E.O. No. 40 which was already repealed. Petitioner also insists that there was an irregularity in the bidding process as the observers presented by respondents were allegedly not independent and cannot be relied upon to observe the process diligently. Petitioner further insists that the presence or absence of observers in the bidding process is a question of fact which the CA cannot tackle in a petition for certiorari under Rule 65. As such, the CA should have remanded the case to the RTC for the determination of the question of fact.²⁷

On the other hand, respondents through the Office of the Government Corporate Counsel (OGCC), counter that petitioner failed to present any evidence before the RTC and the CA to substantiate its claim that the NFA-RBAC was not constituted in accordance with R.A. No. 9184. Having alleged a violation of law, it was incumbent upon petitioner to prove by sufficient evidence that there was indeed such violation. The OGCC points out that unlike petitioner, respondents were able to prove sufficiently that there were actually three observers present during the bidding process, which fact the RTC failed to consider. Moreover, the OGCC argues that respondents' reliance on E.O. No. 40, pending the promulgation of the IRR of R.A. No. 9184, was allowed by Section 77²⁸ of IRR-A. There was likewise no violation of any clear and unmistakable right of petitioner as to warrant the issuance of the writ of preliminary injunction. The OGCC points out that the rejection of petitioner's application was actually petitioner's own fault because petitioner failed to submit the necessary documents despite several notices. Finally, the OGCC stresses that the trial court judge issued the writ of preliminary injunction in violation of the law and with grave abuse of discretion because it effectively and indefinitely renewed and extended the contract between the parties contrary to jurisprudence that no court can compel a party to agree to a contract through the instrumentality of a writ of preliminary injunction.²⁹

Essentially, the sole issue for our resolution is whether the CA erred in setting aside the RTC orders which granted injunctive relief to petitioner.

The petition is bereft of merit.

Section 3, Rule 58 of the 1997 Rules of Civil Procedure, as amended, provides the grounds for the issuance of a preliminary injunction:

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.

Based on the foregoing provision, we held in *Philippine Ports Authority v. Cipres Stevedoring & Arrastre, Inc.*,³⁰ to wit:

A preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned.

At times referred to as the "Strong Arm of Equity," we have consistently ruled that there is no power the exercise of which is more delicate and which calls for greater circumspection than the issuance of an injunction. It should only be extended in cases of great injury where courts of law cannot afford an adequate or commensurate remedy in damages; "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one, and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."

For the writ to issue, two requisites must be present, namely, the existence of the right to be protected, and that the facts against which the injunction is to be directed are violative of said right.¹ *Avvphi1* It is necessary that one must show an unquestionable right over the premises.³¹

Thus, the following requisites must be proved before a writ of preliminary injunction, be it mandatory or prohibitory, 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.³²

In this case, it is apparent that when the RTC issued its December 1, 2005 Order, petitioner has no more legal rights under the service contract which already expired on September 15, 2003. Therefore, it has not met the first vital requisite that it must have material and substantial rights that have to be protected by the courts.³³ It bears stressing that an injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in esse and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right.³⁴ Verily, petitioner cannot lay claim to an actual, clear and positive right based on an expired service contract.

Moreover, well-entrenched in this jurisdiction that no court can compel a party to agree to a contract through the instrumentality of a writ of preliminary injunction.³⁵ A contract can be renewed, revived or extended only by mutual consent of the parties.³⁶ By issuing the assailed orders most particularly its December 1, 2005 Order, the RTC in effect extended the life of the parties' expired contract in clear contravention of our earlier pronouncements.

In sum, we find that the CA committed no reversible error in rendering the assailed decision which would warrant the modification, much less, the reversal thereof.

WHEREFORE, the instant petition for review on *certiorari* is DENIED. The Decision dated July 18, 2007 of the Court of Appeals in CA-G.R. SP No. 93642 is AFFIRMED.

With costs against the petitioner.

SO ORDERED.

MARTIN S. VILLARAMA, JR.

Associate Justice

WE CONCUR:

RENATO C. CORONA

Chief Justice

Chairperson

TERESITA J. LEONARDO-DE CASTRO

Associate Justice

LUCAS P. BERSAMIN

Associate Justice

MARIANO C. DEL CASTILLO

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

RENATO C. CORONA
Chief Justice

Footnotes

¹ Rollo, pp. 8-15.

² Id. at 18-37. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Marina L. Buzon and Rosmari D. Carandang concurring.

³ Records, pp. 111-116, 327-330.

⁴ Id. at 11-16.

⁵ Entitled, "An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes."

⁶ Entitled, "Consolidating Procurement Rules and Procedures for all National Government Agencies, Government-Owned or -Controlled Corporations and Government Financial Institutions, and Requiring the Use of the Government Electronic Procurement System," issued on October 8, 2001.

⁷ Records, p. 17.

⁸ Id. at 19. Per notice, petitioner failed to submit clearances coming from the National Labor Relations Commission (NLRC), Social Security System (SSS), Philippine National Police-Security Agency Guard Supervision Division (PNP-SAGSD) or Philippine National Police-Firearms and Explosive Division (PNP-FED) and a Business Permit for the NFA's La Union branch.

⁹ Id. at 20.

¹⁰ Id. at 22.

¹¹ Id. at 23-25.

¹² Id. at 30-39.

¹³ Id. at 89.

¹⁴ Id. at 111-116.

¹⁵ Id. at 115.

¹⁶ Id. at 147-153.

¹⁷ Id. at 154-156.

¹⁸ Entitled, "Implementing Rules and Regulations of Republic Act No. 9184 otherwise known as The Government Procurement Reform Act."

¹⁹ Supra note 3.

²⁰ CA rollo, pp. 2-21.

²¹ The CA decision erroneously stated that IRR-A of R.A. No. 9184 took effect on October 7, 2003; supra note 2 at 33.

²² Supra note 2.

²³ Id. at 36.

²⁴ CA rollo, pp. 258-259.

²⁵ Rollo, pp. 39-40.

²⁶ Id. at 65.

²⁷ Id. at 66-72.

²⁸ Section 77. Transitory Clause

In all procurement activities, if the advertisement or invitation for bids was issued prior to the effectivity of the Act, the provisions of E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be, shall govern.

In cases where the advertisements or invitations for bids were issued after the effectivity of the Act but before the effectivity of this IRR-A, procuring entities may continue adopting the procurement procedures, rules and regulations provided in E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be.

²⁹ Rollo, pp. 85-90.

³⁰ G.R. No. 145742, July 14, 2005, 463 SCRA 358.

³¹ Id. at 373-374. Citations omitted and emphasis supplied.

³² St. James College of Parañaque v. Equitable PCI Bank, G.R. No. 179441, August 9, 2010, 627 SCRA 328, 344, citing Biñan Steel Corporation v. Court of Appeals, G.R. Nos. 142013 & 148430, October 15, 2002, 391 SCRA 90; and Hutchison Ports Philippines Ltd. v. Subic Bay Metropolitan Authority, G.R. No. 131367, August 31, 2000, 339 SCRA 434. Emphasis supplied.

³³ Manila International Airport Authority v. Olongapo Maintenance Services, Inc., G.R. Nos. 146184-85, 161117 and 167827, January 31, 2008, 543 SCRA 269, 288-289.

³⁴ Go v. Villanueva, Jr., G.R. No. 154623, March 13, 2009, 581 SCRA 126, 133-134, citing Republic v. Villarama, Jr., G.R. No. 117733, September 5, 1997, 278 SCRA 736, 749.

³⁵ See Manila International Airport Authority v. Olongapo Maintenance Services, Inc., supra note 33 at 289; Light Rail Transit Authority v. Court of Appeals, G.R. Nos. 139275-76 and 140949, November 25, 2004, 444 SCRA 125, 139; and National Food Authority v. Court of Appeals, G.R. Nos. 115121-25, February 9, 1996, 253 SCRA 470, 479.

³⁶ Light Rail Transit Authority v. Court of Appeals, id.