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REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
Manila

SECOND DIVISION

AZ 17/13 REALTY, INC.,
Petitioner,

-versus-

AZUCENA LOCSIN-GARCIA,
Respondent.

CA-G.R. SP NO. 152300

Members:

CARANDANG, R. D.
Chairperson,
CRUZ, S. C., *and*
ANTONIO-VALENZUELA, N. G., ***JJ.***

Promulgated:

NOVEMBER 9, 2017

x----------x

RESOLUTION

CRUZ, S. C., J.:

When this case was called for hearing on October 12, 2017 for the purpose on the propriety of the issuance of the Writ of Preliminary Injunction, petitioner's counsel, Atty. Rowena G. Flores in colloboration with Atty. Jo Blanca Labay and Atty. Raymond G. Ligas as well as private respondent's counsel, Atty. Rydely C. Valmores in colloboration with Atty. Carlos F. Romulo and Atty. Lea Gay M. Josef appeared. Both parties did not appear.

After hearing the arguments of the petitioner's counsels for their prayer for the issuance of a Writ of Preliminary Injunction as well as the comments and objections of the respondent's counsels, the instant motion is submitted for resolution.

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Accordingly, as agreed in the hearing, both counsels are directed to submit to this Court their simultaneous memoranda within ten (10) days from today, or until October 22, 2017. Thereafter, with or without said memoranda, the instant case is deemed submitted for resolution/decision.

SO ORDERED.

ORIGINAL SIGNED
STEPHEN C. CRUZ
Associate Justice

WE CONCUR:

ORIGINAL SIGNED
ROSMARI D. CARANDANG
Associate Justice

ORIGINAL SIGNED
NINA G. ANTONIO-VALENZUELA
Associate Justice

CERTIFIED TRUE COPY:
11-09-17
Rosario Rhea Mea E. Binalla
Division Clerk of Court
COURT OF APPEALS

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REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
Manila

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-versus-

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CARANDANG, R. D.
Chairperson,
CRUZ, S. C., *and*
ANTONIO-VALENZUELA, N. G., *JJ.*

Promulgated:

NOVEMBER 9, 2017
3:35 pm

x----------x

RESOLUTION

CRUZ, S. C., J.:

A Resolution[1] was issued by this Court on September 14, 2017 granting the issuance of a Temporary Restraining Order (TRO), which partly reads as follows:

> "**ACCORDINGLY,** this Court hereby resolves to **ISSUE** a **Temporary Restraining Order** (TRO) *ex parte*, and/or maintaining the *staus quo ante* effective immediately, for a period of sixty (60) days, unless sooner lifted, prohibiting and enjoining the implementation of the Decision dated August 10, 2017 of the SEC En Banc, upon posting a bond to answer for the damages which respondent may suffer by reason of the TRO, if the Court should finally decide that petitioner is not entitled thereto in the amount of Three Hundred Thousand pesos (₱300,000.00) payable to this Court within five (5) days from notice hereof. Failure to post

[1] Rollo, pp. 335-339.

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the same within the aforesaid period will result to the automatic lifting of the TRO.

The parties are **REQUIRED** to inform this Court of the date of receipt of the instant resolution.

Let a hearing on the propriety of the issuance of the Writ of Preliminary Injunction be set for oral arguments on September 07, 2017 at 2:30 o'clock in the afternoon at the Court of Appeals, Paras Hall, Second Floor, Main Building, Ma. Orosa St., Ermita, Manila for the aforesaid purpose.

The Division Clerk of Court is hereby directed to personally serve the copies of this Resolution to the Securities and Exchange Commission, the parties and their agents and their respective counsel for their information and guidance.

SO ORDERED."[2]

After considering the arguments presented by both parties during the October 12, 2017 hearing for the purpose of determining the propriety of the issuance of a Writ of Preliminary Injunction (WPI) and the evidence contained in the records of the instant case, it appears that petitioner is entitled to the issuance of a WPI as it indubitably proved that the commission of the acts sought to be temporarily enjoined during the pendency of the petition would not only cause injustice because of the substantial violation of its rights, but likewise probably tend to render the judgment of this Court ineffectual.

Preliminary injunction is a provisional remedy intended to provide protection to parties for the preservation of their rights or interests during the pendency of the principal action.[3] Section1, Rule 58 of the Rules of Court provides:

"Section 1. Preliminary injunction defined; classes. — A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction."

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[2] Id., pp. 338-339.
[3] Republic vs. Court of Appeals, 383 Phil. 398 (2000).

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Injunction is resorted to only when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation.[4] It is an order granted at any stage of an action or proceeding prior to the judgment or final order. It may be: (1) a prohibitory injunction, which commands a party to refrain from doing a particular act; or (2) a mandatory injunction, which commands the performance of some positive act to correct a wrong in the past.[5]

Section 3, Rule 58 of the Revised Rules of Court, enumerates the grounds for the issuance of a writ of preliminary injunction, whether prohibitive or mandatory, *viz*:

> "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 non-performance 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."

Section 5 thereof further provides:

> *"Sec. 5. Preliminary injunction not granted without notice; exception.* - No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made may

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[4] Unilever Philippines (PRC), Inc., vs. The Honorable COURT OF APPEALS and Procter and Gamble Philippines, Inc., G.R. No. 119280, August 10, 2006.

[5] Rules of Court, Rule 58, Section 1; *Levi Strauss & Co., & Levi Strauss (Phils.) Inc. v. Clinton Apparelle, Inc.*, G.R. No. 138900, September 20, 2005, 470 SCRA 236, 252.

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issue a temporary restraining order to be effective only for a period of twenty (20) days from notice to the party or person sought to be enjoined. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from notice to the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

xxx xxx xxx"

From the foregoing provisions, it is clear that the following elements must be present before a Writ of Preliminary Injunction may be issued, to wit: (a) extreme urgency, and (b) grave and irreparable injury will be suffered by the applicant.

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In addition, the Honorable Supreme Court in the case of *European Resources and Technologies, Inc, et. al., vs. Ingenieuburo Birkhahn + Nolte, et. al.,*[6] ruled that prior to the issuance of a WPI, the existence of some requirements must be proved, to wit:

> "Before an injunctive writ can be issued, it is essential that the following requisites are present: (1) there must be a right in esse or the existence of a right to be protected; and (2) the act against which injunction to be directed is a violation of such right. The onus probandi is on movant to show that there exists a right to be protected, which is directly threatened by the act sought to be enjoined. Further, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent a serious damage. Thus, it is clear that for the issuance of the writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage."

The foregoing requisites were synthesized in the recent case of *Lukang vs. Pagbilao Development Corporation, et. al.,*[7] where the Honorable Supreme Court explained:

> "A writ of preliminary injunction is a provisional remedy which is adjunct to a main suit, as well as a preservative remedy issued to maintain the status quo of the things subject of the action or the relations between the parties during the pendency of the suit. The purpose of injunction is to prevent threatened or continuous irremediable injury to the parties before their claims can be thoroughly studied and educated. Its sole aim is to preserve the status *quo* until the merits of the case are fully heard. Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are 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;

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[6] G.R. No. 159586, July 26, 2004.
[7] G.R. No. 195374, March 10, 2014.

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petitioner's certificate of registration. The issuance of the Writ of Preliminary Injunction is conditioned upon the posting by petitioner of a **BOND**, in the amount of **Five Hundred Thousand Pesos** (Php500,000.00), which will answer for any and all damages which respondent Azucena Locsin-Garcia may suffer or sustain by reason of the issuance of the Writ of Preliminary Injunction should this Court finally decide that petitioner is not entitled thereto, and shall remain in full force and effect until the Petition for Review is finally decided.

The Bondsman is hereby directed to accordingly amend the bond previously posted by petitioners pursuant to Our Resolution dated September 14, 2017, in order that it may serve as condition *sine qua non* for the issuance of the instant Writ of Preliminary Injunction.

The parties are **REQUIRED** to inform this Court of the date of receipt of the instant resolution.

The Division Clerk of Court is hereby directed to personally serve with dispatch the copies of this Resolution to the Securities and Exchange Commission, the parties and their agents and their respective counsel for their information and guidance.

SO ORDERED.

ORIGINAL SIGNED
STEPHEN C. CRUZ
Associate Justice

WE CONCUR:

ORIGINAL SIGNED
ROSMARI D. CARANDANG
Associate Justice

ORIGINAL SIGNED
NINA G. ANTONIO-VALENZUELA
Associate Justice

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