



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

PHILIPPINE CHARITY SWEEPSTAKES OFFICE (PCSO),
Chairman of the Board MARGARITA P. JUICO, Members
of the Board MA. ALETA L. TOLENTINO, MABEL V.
MAMBA, FRANCISCO G. JOAQUIN III and BETTY B.
NANTES, and General Manager JOSE FERDINAND M. ROJAS II,

G.R. No. 212143

Petitioners,

- versus -

TMA GROUP OF COMPANIES
PTY LTD. (now known as TMA
AUSTRALIA PTY LTD.) and TMA
GROUP PHILIPPINES, INC.

Respondents.

X-----X

PHILIPPINE CHARITY SWEEPSTAKES OFFICE (PCSO),
Chairman of the Board MARGARITA P. JUICO, Members
of the Board MA. ALETA L. TOLENTINO, MABEL V.
MAMBA, FRANCISCO G. JOAQUIN III and BETTY B.
NANTES, and General Manager JOSE FERDINAND M. ROJAS II,

G.R. No. 225457

Petitioners,

- versus -

Reyes

**TMA GROUP OF COMPANIES
PTY LTD. (now known as TMA
AUSTRALIA PTY LTD.), and
TMA GROUP PHILIPPINES, INC.,**

Respondents.

X-----X

**PHILIPPINE CHARITY
SWEEPSTAKES OFFICE (PCSO),
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MARGARITA P. JUICO, Members
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TOLENTINO, MABEL V.
MAMBA, FRANCISCO G.
JOAQUIN III and BETTY B.
NANTES, and General Manager
JOSE FERDINAND M. ROJAS II,**

Petitioners,

G.R. No. 236888

Present:

*PERALTA, J., Chairperson,
LEONEN,
REYES, A., JR.,
HERNANDO,* and
INTING, JJ.*

- versus -

**HONORABLE JOSELITO C.
VILLAROSA, in his capacity as
Presiding Judge of Branch 66,
Regional Trial Court of Makati
City, TMA GROUP OF
COMPANIES PTY LTD. (now
known as TMA AUSTRALIA PTY
LTD.) and TMA GROUP
PHILIPPINES, INC.,**

Respondents.

Promulgated:

August 28, 2019

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X-----X

DECISION

REYES, A., JR., J.:

* On wellness leave.

Reyes

This resolves three consolidated petitions, all filed with the Court by Philippine Charity Sweepstakes Office (PCSO) and its key officials, Chairman of the Board Margarita P. Juico, Members of the Board Ma. Aleta L. Tolentino, Mabel V. Mamba, Francisco G. Joaquin III and Betty B. Nantes, and General Manager Jose Ferdinand M. Rojas II (petitioners), and which arose from an action for specific performance docketed as Civil Case No. 11-310 and filed against said petitioners by TMA Group of Companies Pty Ltd. (now known as TMA Australia Pty. Ltd.) (TMA Australia) and TMA Group Philippines, Inc. (TMA Philippines) (collectively referred to as TMA) with the Regional Trial Court (RTC) of Makati City. Specifically, the consolidated petitions are:

- (1) **G.R. No. 212143**, a *Petition for Review on Certiorari with Urgent Motion for Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction*¹ against TMA, which asks the Court to reverse and set aside the Court of Appeals' (CA) Decision² dated March 27, 2014 in CA-G.R. SP No. 132655;
- (2) **G.R. No. 225457**, a *Petition for Review on Certiorari*³ against TMA that seeks the reversal of the CA's Decision⁴ dated February 4, 2016 and Resolution⁵ dated June 27, 2016 in CA-G.R. SP No. 137528; and
- (3) **G.R. No. 236888**, a *Petition for Certiorari*⁶ against TMA and Judge Joselito C. Villarosa (Judge Villarosa), in his capacity as Presiding Judge of RTC of Makati City, Branch 66, and which seeks to annul and set aside the Judge Villarosa's Order⁷ dated January 18, 2018 in Civil Case No. 11-310.

The Antecedents

On April 8, 2011, TMA filed with the RTC of Makati City the *Complaint for Specific Performance and Mandatory and Prohibitory Injunction, with Prayer for Temporary Restraining Order and/or Preliminary Injunction*⁸ docketed as Civil Case No. 11-310, relative to a

¹ *Rollo* (G.R. No. 212143), pp. 10-47.

² Penned by Associate Justice Vicente S.E. Veloso (now retired), with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela concurring; *id.* at 57-71.

³ *Rollo* (G.R. No. 225457), pp. 11-45.

⁴ Penned by Associate Justice Florito S. Macalino (now deceased), with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles concurring; *id.* at 57-66.

⁵ *Id.* at 54-55.

⁶ *Rollo* (G.R. No. 236888), pp. 3-40.

⁷ *Id.* at 49-52-A.

⁸ *Rollo* (G.R. No. 212143), pp. 101-111.

Meyer

Contractual Joint Venture Agreement⁹ (CJVA) dated December 4, 2009 that was executed by and between TMA Australia and PCSO. Under the CJVA, PCSO,¹⁰ the government entity created under Republic Act No. 1169 to hold charity sweepstakes and lotteries, and TMA Australia,¹¹ a company based in Australia and which specializes in the production of consumables and accountable documents using thermal-coated substrates, agreed to enter into a joint venture (JV) for the establishment of the first thermal coating plant in the Philippines. The CJVA specifically indicates the following as the JV's purpose and term:

4. ORGANIZATION OF THE JOINT VENTURE

x x x x

4.2 The purpose of the JV is to establish and operate the first thermal coating plant in the Philippines, and to generally engage in the production and marketing of thermal-coated paper, synthetic substrates and other related products, for the primary purpose of export sales with the balance of production capacity to be used for sales in the local market for the creation of profit for both Parties.

4.3 The JV shall have a term of fifty (50) years. However, on the 25th year and every five (5) years, thereafter, both PCSO and TMA shall enter into best efforts negotiations with the end in view of affording more benefits and concessions to PCSO for the remaining life of the 50-year joint venture; provided that, if no agreement is reached between the parties, the original terms of the Joint Venture Agreement shall continue to be enforced.¹²

As to the parties' respective contributions, TMA committed to invest approximately ₱4.4 billion over the life of the JV, while PCSO committed all its thermal paper and other specialized paper products and consumables requirements for all current, future and other gaming activities for the next fifty (50) years, subject to the negotiation provisions under the afore-quoted paragraph 4.3 of the CJVA.¹³ As to the sharing of profits, 80% of the JV's profits after all applicable taxes in the Philippines would go to TMA, while the remaining 20% would go to PCSO.

The implementation of the CJVA ensued. Pursuant to a requirement under the CJVA, TMA Australia organized and registered with the Securities and Exchange Commission TMA Philippines as its local subsidiary for the purpose of implementing the project. By August 20, 2010, however, the PCSO Board of Directors issued Resolution No. A-00024,

⁹ Id. at 73-84.

¹⁰ Represented in the CJVA by its then Vice Chairman and General Manager, Rosario C. Uriarte.

¹¹ Represented in the CJVA by its Managing Director, Anthony Karam.

¹² *Rollo* (G.R. No. 212143), p. 76.

¹³ Id. at 76-78.



series of 2010,¹⁴ which suspended the implementation of the CJVA as it purportedly sought a review of the agreement by the Office of the Government Corporate Counsel (OGCC). The Board Resolution reads:

Be it RESOLVED, that the PCSO Board of Directors, suspends the implementation and withdraws all nominations and representation of PCSO in the PCSO-TMA Joint Venture Agreement pending review of the Office of the Government Corporate Counsel;

RESOLVED FURTHER, to revoke any authority granted to any person to represent PCSO in relation to the said PCSO-TMA JV Agreement.¹⁵

The request for the OGCC's review of the CJVA was made by then PCSO General Manager Jose Ferdinand M. Rojas II. For the PCSO, the OGCC's prior opinion that the CJVA complied with the 2008 Guidelines and Procedures for Entering Into Joint Venture Agreement Between Government and Private Entities (JV Guidelines) might have overlooked that certain provisions of the agreement indicated that it was simply a supply contract masked as a JV agreement.¹⁶

Acting on the review request, the OGCC finally issued, on April 4, 2011, Opinion No. 079, series of 2011.¹⁷ The ensuing Opinion of the OGCC provided that the subject CJVA was null and void, mainly because the purpose for which the JV was constituted went beyond the primary corporate purpose, mandate or charter of PCSO. Pertinent provisions of the OGCC Opinion read:

A judicious examination of the aforementioned observations and analysis that delve into the substance of the CJVA shows that its **subject matter, object or purpose**, which is the establishment of a Thermal Coating Plant primarily for export sales of thermal papers and the range of substrates it may produce, is not within PCSO's primary corporate purpose and mandate. PCSO's mandate is, among others, to hold charity sweepstakes and lotteries.¹⁸ (Emphasis and underscore in the original)

The PCSO's contribution to the JV that pertained to the purchase of thermal paper for the next fifty (50) years likewise breached the provision in the JV Guidelines that requires government contribution in JVs to be through assets (including money, equipment, land, intellectual property or

¹⁴ Id. at 86.

¹⁵ Id.

¹⁶ Id. at 87-88.

¹⁷ Id. at 87-96; Re: Request for Review of OGCC Contract Review 51, Series of 2011 to Include PCSO's Options and the Possible Repercussions of Each Course of Action.

¹⁸ Id. at 89.

heyes

anything of value).¹⁹ “Hardly can a mere promise be categorized as anything of value.”²⁰

Further, the OGCC opined that the CJVA appeared to be relatively simulated because while it was apparently a JV arrangement for the establishment of a thermal coating plant, the agreement appeared to be, in fact, a Supply Contract. No actual capital contribution was even expected from PCSO under the terms of the CJVA.²¹ The OGCC pointed out that the ploy wrongfully did away with the requirement of a public bidding, as it declared:

In this case, the juridical act which binds PCSO and TMA is the Supply Contract although this was concealed and made to appear as a Public Private Partnership through a Joint [V]enture Agreement to exempt them from the rigors of public bidding pursuant to R.A. 9184, the law that primarily governs the mode of procurement of government supplies, goods and services. Moreover, the CJVA can be a convenient tool to deprive the Commission on Audit (COA) of its audit jurisdiction involving public funds.²²

In conclusion, the OGCC explained that PCSO could invoke the nullity of the CJVA should TMA decide to bring an action for specific performance against it. It likewise mentioned the possibility of an extrajudicial settlement on a mutual termination of the agreement, as it reiterated that litigation is discouraged by reason of public policy.²³

In the meantime, prompted by PCSO’s suspension of the implementation of the subject CJVA, TMA had sent a letter dated March 21, 2011 to the PCSO Board of Directors and General Manager, urging them to lift the suspension of the CJVA. By April 8, 2011, TMA instituted with the RTC of Makati City the action for specific performance docketed as Civil Case No. 11-310, *via* a complaint that contained the following prayer:²⁴

WHEREFORE, plaintiffs respectfully pray that the Honorable Court immediately issue:

(a) A Writ of Preliminary Mandatory Injunction requiring defendants to immediately lift the suspension of the implementation of the CJVA and resume such implementation without delay; and

¹⁹ Id. at 90.

²⁰ Id. at 91.

²¹ Id. at 94.

²² Id.

²³ Id. at 95.

²⁴ Id. at 109-110.

Meyer

(b) A Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction ordering defendants to cease and desist from performing any act that will lead to or constitute cancellation of the CJVA, including but not limited to the bidding out of its Lotto paper requirements.

Thereafter, after trial, judgment be rendered requiring defendants to fully and faithfully comply with the terms and provisions of the CJVA at all times during its effectivity.

Plaintiffs pray for such other reliefs as may be just and equitable in the premises.

The case was raffled off to the *sala* of Presiding Judge Winlove M. Dumayas (Judge Dumayas), RTC of Makati City, Branch 59. On April 13, 2011, Judge Dumayas granted TMA's application for a temporary restraining order (TRO) in the meantime that the application for the issuance of a writ of preliminary prohibitory injunction remained to be heard. The petitioners or any persons acting on their behalf were enjoined "to cease and desist from performing any act that will lead to or constitute cancellation of the CJVA, including but not limited to the bidding out of its Lotto paper requirements upon posting an injunctive bond in the amount of Ten Million [Php 10,000,000.00] to answer for such damages that [TMA] may suffer if it later turns out that [petitioners] are not entitled thereto."²⁵ The TRO was valid for twenty days.

On May 13, 2011, the RTC issued an Order²⁶ that granted TMA's applications for a Writ of Preliminary Mandatory Injunction and Preliminary Prohibitory Injunction, subject to the posting of a bond in the amount of ₱15,000,000.00. The Order's *fallo* reads:

WHEREFORE, premises considered, [TMA's] prayer for the issuance of Writs of Preliminary [M]andatory Injunction and Preliminary Prohibitory Injunction is hereby GRANTED. Accordingly, the Branch Clerk of Court, this Court, is hereby ordered to forthwith issue the following:

- 1) Writ of Preliminary Injunction directing defendants to immediately lift the suspension of the implementation of the Joint Venture Agreement and to resume such implementation, without delay; and,
- 2) Writ of Preliminary Prohibitory Injunction enjoining defendants to cease and desist from performing any act that will lead to or constitute cancellation of the Joint Venture Agreement and

²⁵ Id. at 118.

²⁶ Id. at 119-123.

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committing any other act that would nullify in effect the implementation of the Joint Venture Agreement, including but not limited to the conduct of any bidding for its lotto paper requirements;

upon posting by [TMA] of an injunctive bond in the amount of P15,000,000.00 subject to the approval of this Court, to answer to such damages that defendants may suffer if it later turns out that [TMA is] not entitled to the preliminary mandatory and prohibitory injunction.

SO ORDERED.²⁷

Feeling aggrieved, the petitioners filed a Motion to Quash Writ of Preliminary Mandatory and Prohibitory Injunction,²⁸ by which they alleged that the RTC had prejudged the case in TMA's favor, as it practically granted the main prayer in the action for specific performance. They likewise argued that the requisites for the issuance of an extraordinary writ of injunction were not satisfied. These requisites demand that: (1) there must be a present right, or right *in esse*, to be protected; and (2) the act against which the injunction is to be directed is a violation of such right. Petitioners further argued that the RTC failed to consider that the CJVA was null and void for being a supply contract that was masked as a JV agreement.

Petitioners' motion to quash was still denied by the RTC in an Order²⁹ dated September 4, 2013, the decretal portion of which reads:

WHEREFORE, premises considered, defendants' PCSO[, *et al.*'s] Motion to Quash Writ of Preliminary Mandatory and Prohibitory Injunction is hereby DENIED.

SO ORDERED.³⁰

The foregoing prompted the petitioners to assail before the CA the RTC's Orders dated May 13, 2011 and September 4, 2013 *via* a Petition for *Certiorari* and Prohibition docketed as CA-G.R. SP No. 132655.

Meanwhile, on October 14, 2013, TMA filed with the RTC an Extremely Urgent Omnibus Motion³¹ indicating that PCSO refused to heed to the conditions that were set forth in the injunctive writs. TMA asked the RTC to compel the PCSO to issue Purchase Orders for its lottery consumables under such terms provided in the subject CJVA. The motion

²⁷ Id. at 122-123.

²⁸ Id. at 127-148.

²⁹ Id. at 177-179.

³⁰ Id. at 179.

³¹ *Rollo* (G.R. No. 225457), pp. 215-220.

Heyer

was opposed by the petitioners, but it was still granted by the RTC in an Order³² dated November 6, 2013. It ruled:

Without going deeper into the merits of the case, in compliance with the Writ of Injunction earlier issued and to avoid the disruption of the lottery operation of PCSO, which is vested with public interest, this Court orders:

1. Plaintiff to immediately deliver to PCSO the following papers:

	Volume	Prices
Luzon Thermal Rolls	804,000 pieces	Php 357.5967

Betting Slips:

6/55	192,000,000 pieces	Php 0.4221
6/49	180,000,000 pieces	Php 0.4221
6/45	180,000,000 pieces	Php 0.4221
6/42	120,000,000 pieces	Php 0.4221
6-D	26,000,000 pieces	Php 0.4221
4-D	27,600,000 pieces	Php 0.4221
3-D	30,000,000 pieces	Php 0.4221
EZ2	120,000,000 pieces	Php 0.4221

Luzon and Visayas Mindanao Terminals:

Thermal Rolls	600,000 pieces	Php 357.59 and Php 436.09
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Betting Slips

6/42	84,000,000 pieces	Php 0.4221
6/45	108,000,000 pieces	Php 0.4221
6/49	108,000,000 pieces	Php 0.4221
4-D	36,000,000 pieces	Php 0.4221
3-D	96,000,000 pieces	Php 0.4221
2-D	36,000,000 pieces	Php 0.4221
6/55	96,000,000 pieces	Php 0.4221

2. PCSO is ordered to accept and pay the above goods in accordance with the prices [set forth] in the CJVA including any adjustments provided therein at the time of the issuance of this Order.

SO ORDERED.³³

The petitioners moved for a reconsideration of the trial court's Order.³⁴ Pending the resolution of the motion for reconsideration, the RTC

³² Id. at 227-229.

³³ Id. at 228-229.

³⁴ Id. at 230-239.

Meyer

issued an Order dated November 25, 2013 that directed TMA to suspend compliance with the Order dated November 6, 2013. Notwithstanding such order, however, the petitioners claimed that on November 25 and 26, 2013, TMA still delivered to the PCSO Warehouse 8, Camp Aguinaldo, Quezon City the lotto papers that were enumerated in the November 6, 2013 Order.³⁵

On March 18, 2014, Judge Dumayas voluntarily inhibited from the case for specific performance. The case was re-raffled to the *sala* of Judge Elpidio R. Calis (Judge Calis) of the RTC of Makati City, Branch 133.³⁶

On March 27, 2014, the CA rendered in CA-G.R. SP No. 132655 its Decision that favored TMA. The CA found no error in the RTC's issuance of the Orders dated May 13, 2011 and September 4, 2013, as it referred to the necessity to maintain the *status quo* between the parties in the meantime that the principal action for specific performance remained pending. The appellate court explained:

[I]f We [were] to allow PCSO, et al. to suspend the CJVA without TMA's consent, and worse, without due process, the same would work injustice to the latter as it would be violative of its right under the CJVA. Its causing TMA **irreparable injury**, as a protected party under the contract, is evidently beyond dispute.

PCSO, et al. also allege that respondent Judge has practically granted the main relief sought in TMA's complaint when it granted the subject writs.

x x x x

x x x. In the exercise of its discretion, the RTC merely opted to preserve the *status quo* between the parties pending determination of the merits of TMA's principal action for specific performance. Its intention was to avoid any irreparable injury that a non-issuance of the injunctive writ may cause TMA.

In sum, if the RTC did **not** err when it issued the assailed Orders, We all the more find it difficult to rule, at this point, that it committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued said Orders.³⁷ (Emphasis in the original)

The *fallo* of the CA's Decision then reads:

³⁵ Id. at 18.

³⁶ Id. at 19.

³⁷ *Rollo* (G.R. No. 212143), pp. 69-70.

Meyer

WHEREFORE, denying the petition, the same is consequently **DISMISSED**, for lack of merit.

SO ORDERED.³⁸ (Emphasis in the original)

Hence, the petitioners, through the OGCC, filed with the Court the *Petition for Review on Certiorari with Urgent Motion for Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction* docketed as **G.R. No. 212143**.³⁹

On the other hand, TMA filed with the RTC a Motion for Execution,⁴⁰ dated April 30, 2014, that asked the RTC of Makati City to require the execution “on moneys, properties and other assets of the PCSO sufficient to pay for the price of the deliveries in the amount of EIGHTY-TWO MILLION PESOS (P82,000,000.00), plus interest of twelve percent (12%) from due date of the delivery, until the time of payment”⁴¹ for deliveries that were purportedly effected by TMA under the Order of the RTC that was issued on November 6, 2013. The petitioners opposed the motion and argued that there was nothing in the trial court’s preliminary injunction that called for a direct purchase from TMA by PCSO of its lotto consumables.⁴²

On June 11, 2014, Judge Calis issued an Order⁴³ granting the motion for execution. He explained that “the supply and delivery of thermal papers and betting slips by [TMA] to the PCSO is part and parcel of the implementation of the JVA.”⁴⁴ The *fallo* of his Order reads:

WHEREFORE, premises considered, the Motion for Execution is **GRANTED**. Accordingly, the Court hereby orders the following:

1. Let a Writ of Execution be issued directing the [petitioners] to immediately pay the amount of EIGHTY TWO MILLION THREE HUNDRED FIFTY FOUR THOUSAND THIRTY SEVEN AND 32/100 (PHP82,354,037.32).
2. For this purpose, the Branch Sheriff is directed to execute on the monies, properties and assets of the Defendant PCSO wherever they may be found, in order to satisfy the said amount.

SO ORDERED.⁴⁵

³⁸ Id. at 71.

³⁹ Id. at 10-47.

⁴⁰ *Rollo* (G.R. No. 225457), pp. 307-313.

⁴¹ Id. at 312.

⁴² Id. at 316-329.

⁴³ Id. at 330-333.

⁴⁴ Id. at 332.

⁴⁵ Id. at 332-333.

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In an Omnibus Motion,⁴⁶ the petitioners asked the RTC to, *first*, reconsider the Order dated June 11, 2014 that granted the motion for execution and, *second*, quash the Writ of Execution dated June 13, 2014 that was issued pursuant thereto. On August 12, 2014, the RTC denied the Omnibus Motion *via* an Order⁴⁷ with a dispositive portion that reads:

WHEREFORE, premises considered, the [petitioners'] Omnibus Motion dated 23 June 2014 is **DENIED** for lack of merit. With the filing of [petitioners'] Joint Answer *Ex Abudanti Ad Cautelam* dated May 12, 2011, let the above entitled case be referred to mediation on August 29, 2014, 9 o'clock in the morning before the Philippine Mediation Center 10th Floor, Makati City Hall. The proceedings relative to the specific performance and indirect contempt are hereby suspended pending mediation proceedings.

SO ORDERED.⁴⁸ (Emphasis in the original)

The RTC cited its previous Orders in which it reiterated the obligation of PCSO under the CJVA to procure its paper products from TMA. There was also nothing wrong or irregular with the issuance by the trial court of a writ of execution against PCSO's funds, given that the agency's charter clothed it with a juridical personality that was separate and distinct from the government.

Undaunted, the petitioners filed with the CA another *Petition for Certiorari and Prohibition*,⁴⁹ docketed as CA-G.R. SP No. 137528, to seek the reversal and annulment of the RTC Orders dated June 11, 2014 and August 12, 2014. They pointed out that the injunctive writs merely ordered that the *status quo* between the parties be preserved. "[T]he *status quo* between the parties existing prior to the filing of the case is the initial stage in the implementation of the assailed JV which is firstly the establishment of a thermal coating plant capable of producing the paper products. This was the *status quo* at the time the 13 May 2011 Order granting the Injunctive Writs was issued."⁵⁰ Petitioners further insisted that the properties and funds of PCSO could not be garnished as they belonged to the government.⁵¹

While CA-G.R. SP No. 137528 remained pending with the CA, TMA filed another Motion for Execution (Pursuant to the Manifestation Filed on 18 June 2014)⁵² dated August 1, 2014, that asked for another writ of

⁴⁶ Id. at 334-354.

⁴⁷ Id. at 387-391.

⁴⁸ Id. at 391.

⁴⁹ Id. at 355-386.

⁵⁰ Id. at 365.

⁵¹ Id. at 370.

⁵² *Rollo* (G.R. No. 236888), pp. 221-229.

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execution to cover the price of paper deliveries in the amount of ₱178,139,975.84, plus interest of 12% from due date of the delivery. This amount covered deliveries distinct from those included in the ₱82,000,000.00 that was previously demanded. The motion remained unresolved as the case was referred to mediation and judicial dispute resolution (JDR). When the mediation and JDR failed, the case was re-raffled to the *sala* of Judge Villarosa, RTC of Makati City, Branch 66.⁵³

Meanwhile, the Court granted in G.R. No. 212143 the petitioners' application for a TRO. It enjoined the RTC from implementing the Order dated November 6, 2013, as stated in a Resolution dated October 20, 2014, *viz.*:

As prayed for, the Court further resolves to ISSUE a TEMPORARY RESTRAINING ORDER, effective immediately and continuing until further orders from this Court, enjoining the Regional Trial Court, Branch 59, Makati City, from implementing its assailed Order dated November 6, 2013 in Civil Case No. 11-310 x x x which granted the "Extremely Urgent Omnibus Motion" dated October 11, 2013 filed by TMA Group of Companies PTY, LTD. and TMA Group Philippines, Inc."⁵⁴

The CA eventually dismissed CA-G.R. SP No. 137528 *via* a Decision⁵⁵ dated February 4, 2016, the decretal portion of which reads:

IN VIEW OF THE FOREGOING, the assailed Orders are **affirmed**. Accordingly, the petition is hereby **DISMISSED**.

SO ORDERED.⁵⁶ (Emphasis in the original)

The appellate court reasoned:

We find nothing erroneous in the RTC's issuance of the assailed Orders. It is aptly ruled by the RTC that the obligation to procure and source PCSO's paper requirements from private respondents is expressly provided in the CJVA and is the intention of the parties x x x[.]

x x x x

In directing PCSO to immediately lift the suspension of the CJVA and to resume such implementation without delay in its Writ of

⁵³ Id. at 15.

⁵⁴ Id. at 245.

⁵⁵ Penned by Associate Justice Florito S. Macalino, with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles concurring; *rollo* (G.R. No. 225457), pp. 57-66.

⁵⁶ Id. at 65.

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Preliminary Mandatory Injunction, the RTC commands the performance of some positive act to correct a wrong in the past, *i.e.* the fulfillment of the obligations of both parties to the CJVA. The CJVA, specifically provision 6.4, embodies the commitment of private respondents to supply lottery paper requirements of PCSO and the establishment of a thermal coating plant in the Philippines. It must be emphasized that the CJVA has commenced implementation as asserted by private respondents x x x[.]

x x x x

[A]nd the delivery by private respondents of thermal papers and betting slips is part of its commitment to the CJVA.

A preliminary mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the *status quo* between the parties, it also commands the performance of an act. Hence, the delivery of thermal papers and betting slips during the pendency of the case for specific performance is considered a performance of a positive act within the meaning of a preliminary mandatory injunction.⁵⁷ (Citation omitted)

Considering the undisputed fact that there had been deliveries of lotto papers by TMA to PCSO, the CA held that the latter must compensate TMA. The rule that government funds cannot be subject of execution or garnishment is subject to exceptions. Among these exceptions, funds of public corporations that can sue and be sued are not exempt from garnishment. Under its charter, Republic Act No. 1169, PCSO is with all the general powers of a corporation.⁵⁸

The petitioners filed a motion for reconsideration,⁵⁹ but this was denied by the CA in its Resolution⁶⁰ dated June 27, 2016. Hence, petitioners filed with the Court the Petition for Review on *Certiorari* docketed as **G.R. No. 225457**, which sought the reversal and setting aside of the CA Decision dated February 4, 2016 and Resolution dated June 27, 2016. On October 5, 2016, the Court issued a Resolution⁶¹ that consolidated G.R. No. 225457 and G.R. No. 212143.

Several other incidents transpired in the main case with the RTC. On August 3, 2017, TMA filed with the trial court a Motion for Summary Judgment, which was granted by Judge Villarosa. In a Decision dated December 5, 2017, the RTC ruled that the writ of preliminary injunction that was earlier issued in the case was substituted by a writ of permanent

⁵⁷ Id. at 62-63.

⁵⁸ Id. at 64-65.

⁵⁹ Id. at 67-71.

⁶⁰ Id. at 54-55.

⁶¹ *Rollo* (G.R. No. 212143), p. 487.

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mandatory and prohibitory injunction.⁶² Dissatisfied by the decision, the petitioners filed a corresponding Notice of Appeal.⁶³

In the meantime, TMA filed, on December 12, 2017, with the trial court a Motion for Execution of the Decision dated December 5, 2017, asking the RTC to compel PCSO to issue “an Order directing the issuance of a Writ of Execution requiring the Sheriff to execute on moneys, properties and other assets of PCSO sufficient to pay the amount of Php707,223,555.44.”⁶⁴ TMA claimed that thermal rolls and bet slips amounting to Php707,223,555.44, inclusive of VAT, had been manufactured for PCSO and stored at TMA’s warehouse in Calamba, Laguna, ready to be transported to PCSO’s warehouse at any time, upon a two-day notice. TMA sent a demand letter to PCSO corresponding to the said amount, but the latter still refused to pay.⁶⁵ On January 18, 2018, the RTC resolved to grant TMA’s motion for execution *via* an Order with the *fallo* that reads:

WHEREFORE, premises considered, plaintiffs’ Motion for Execution dated December 12, 2017 is hereby GRANTED. Let a Writ of Execution be issued requiring the Sheriff to execute on moneys, properties and other assets of defendant PCSO sufficient to pay the amount of Php707,223,555.44. Further, the subject lotto papers, thermal rolls and bet slips shall remain in the custody of Plaintiffs until defendant PCSO has paid and is ready to accept the same.

SO ORDERED.⁶⁶

As it referred to the CA’s prior decision in CA-G.R. SP No. 137528, a valid and binding writ of preliminary injunction that directed the implementation of the CJVA, the RTC explained that under the agreement, TMA has the exclusive right to supply PCSO’s lotto paper requirements. PCSO, on the other hand, had the correlative duty to exclusively procure lotto papers from TMA. The payment or execution is a mere consequence and a necessary effect of the injunction. While TMA was ready to deliver the paper supplies that were necessary for PCSO’s lotto operations, the latter effectively prevented the delivery by failing to issue the corresponding purchase orders. The trial court thus held:

Defendants’ arguments pertaining to the lack of judgment or decision directing the payment of Php707 Million and that this case is not a collection of sum of money are inconsequential. The right of plaintiffs to be paid by defendant PCSO for the supply of lotto papers does not arise

⁶² *Rollo* (G.R. No. 236888), p. 18.

⁶³ *Id.* at 333-335.

⁶⁴ *Id.* at 49.

⁶⁵ *Id.* at 49-50.

⁶⁶ *Id.* at 52-A.

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from a judgment of the Decision dated December 5, 2017; rather, it arose from the Writ of Preliminary Injunction. This payment or execution is a mere consequence and a necessary effect of the aforementioned injunction.

x x x x

With the refusal of defendant PCSO to implement the CJVA and to issue purchase orders, the Court, through the Writ of Preliminary Injunction, can intervene by allowing plaintiffs to supply and deliver lotto papers to defendant PCSO and require the latter to pay for such papers, in accordance with the CJVA. For the Court to shy away from this duty is to make the injunction a toothless remedy to the detriment of the administration of justice. The court's intervention becomes more imperative by virtue of the public interest involved in the operations of lotto.

x x x x

Without said lotto papers, the lotto operations of the government will be paralyzed and will affect public interest and the economy. Defendant PCSO cannot hold hostage the lotto operations nationwide by refusing to issue purchase orders for lotto papers despite the obvious need therefor. It is thus necessary that PCSO procures lotto papers from plaintiffs TMA, through the JV, and for the latter to ensure such delivery in accordance with the CJVA.⁶⁷

The decretal portion of the RTC's Order then reads:

WHEREFORE, premises considered, plaintiffs' Motion for Execution dated December 12, 2017 is hereby **GRANTED**. Let a Writ of Execution be issued requiring the Sheriff to execute on moneys, properties and other assets of defendant PCSO sufficient to pay the amount of Php707,223,555.44. Further, the subject lotto papers, thermal rolls and bet slips shall remain in the custody of Plaintiffs until defendant PCSO has paid and is ready to accept the same.

SO ORDERED.⁶⁸

A corresponding Writ of Execution⁶⁹ and Notice to Comply/Pay⁷⁰ were issued by the trial court. This prompted the petitioners to directly file with the Court the *Petition for Certiorari*⁷¹ docketed as **G.R. No. 236888**. They sought to justify the direct recourse to the Court by alleging that "there is no plain, speedy and adequate remedy in the ordinary course of law, and

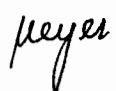
⁶⁷ Id. at 52.

⁶⁸ Id. at 52-A.

⁶⁹ Id. at 53.

⁷⁰ Id. at 54.

⁷¹ Id. at 3-40.



that the matters and issues involved in the assailed Order in [the] Petition are closely interrelated to the consolidated cases in [G.R. No. 225457 and G.R. No. 212143].”⁷² Incorporated in the petition was an application for TRO and/or writ of preliminary injunction so that the RTC of Makati City, Branch 66, could be prevented from implementing its Order dated January 18, 2018.

Consolidation of G.R. No. 236888 with G.R. No. 225457 and G.R. No. 212143 was made by the Court in its Resolution⁷³ dated March 7, 2018.

The Present Petitions

All three consolidated petitions arose from the issuance, on May 13, 2011, by the RTC, in Civil Case No. 11-310, of the questioned injunctive writs, and the separate writs of execution, covering significant amounts of ₱82,354,037.32 and ₱707,223,555.44, that were purportedly issued on the basis thereof.

In G.R. No. 212143, petitioners particularly enumerate the following assignment of errors:

A. THE CA ERRED IN FINDING THAT JUDGE DUMAYAS DID NOT GRAVELY ABUSE HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE 13 MAY 2011 AND 4 SEPTEMBER 2013 ORDERS AND, WORSE, HE INVALIDLY CREATED NEW RELATIONS BETWEEN THE PARTIES.

B. THE CA ERRED IN FINDING THAT IN ISSUING THE ANCILLARY REMEDY OF THE INJUNCTIVE WRITS, JUDGE DUMAYAS MERELY OPTED TO PRESERVE THE *STATUS QUO*, THE TRUTH BEING THAT HE HAD PRACTICALLY GRANTED THE MAIN RELIEF SOUGHT IN THE SPECIFIC PERFORMANCE CASE.⁷⁴

In G.R. No. 225457, the petitioners raise the following assignment of errors:

A. THE CA ERRED IN FINDING THAT JUDGE CALIS DID NOT GRAVELY ABUSE HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE 11 JUNE 2014 ORDER GRANTING THE MOTION FOR THE ISSUANCE OF THE WRIT OF EXECUTION.

⁷² Id. at 8.

⁷³ Id. at 416-418.

⁷⁴ *Rollo* (G.R. No. 212143), pp. 19-20.

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B. THE CA ERRED IN FINDING THAT JUDGE CALIS DID NOT GRAVELY ABUSE HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED TO PCSO THE NOTICE TO COMPLY AND ORDERED THE PAYMENT OF PHP82,354,037.32 TO TMA, REPRESENTING THE ALLEGED DELIVERIES OF LOTTO PAPERS TO PCSO WHICH IT DID NOT ORDER.

C. THE CA ERRED IN FINDING THAT JUDGE CALIS DID NOT GRAVELY ABUSE HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN JUDGE CALIS' ASSAILED 11 JUNE 2014 ORDER DIRECTED THAT PCSO SHOULD IMMEDIATELY PAY TMA PHP82,354,037.32.⁷⁵

In G.R. No. 236888, the petitioners cite the following grounds to support their petition for *certiorari*:

- A. JUDGE VILLAROSA GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE RELIED ON THE WRIT OF PRELIMINARY INJUNCTION FOR THE SUPPLY AND DELIVERY OF THE LOTTO PAPERS TO PCSO.
- B. JUDGE VILLAROSA GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE ASSAILED ORDER PURSUANT TO THE ANCILLARY WRIT OF PRELIMINARY INJUNCTION WHICH WAS ALREADY SUBSTITUTED BY THE WRIT OF PERMANENT INJUNCTION AS PER HIS 5 DECEMBER 2017 DECISION.
- C. JUDGE VILLAROSA GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE ASSAILED 18 JANUARY 2018 ORDER BECAUSE IT DIRECTED THE PAYMENT OF PHP707,223,555.44 IN THE ABSENCE OF ANY PURCHASE ORDER FOR LOTTO PAPERS FROM PCSO.
- D. JUDGE VILLAROSA'S ASSAILED ORDER IS AN EXACT REPLICA OF THE 6 NOVEMBER 2013 ORDER WHICH WAS RESTRAINED BY THIS HONORABLE COURT'S FIRST DIVISION IN ITS 20 OCTOBER 2014'S RESOLUTION IN G.R. 212143.
- E. JUDGE VILLAROSA'S ASSAILED ORDER WAS BASED ON THE COURT OF [APPEALS'] DECISION WHICH IS NOT A BINDING AUTHORITY AND STILL PENDING REVIEW BY THIS HONORABLE SUPREME COURT.⁷⁶

⁷⁵ Rollo (G.R. No. 225457), pp. 21-22.

⁷⁶ Rollo (G.R. No. 236888), pp. 20-21.

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Pending the resolution of the petitions, TMA filed an Extremely Urgent Opposition (To: PCSO's Application for the Issuance of TRO/WPI)⁷⁷ dated March 5, 2018, as it explained that the petitioners' prayer had been rendered moot by the fact that the act sought to be enjoined had already become *fait accompli*. Apparently, the Philippine National Bank had already released the amount of ₱707,223,555.44, through a Manager's Check⁷⁸ dated February 23, 2018, and debited against the account of PCSO, to satisfy the writ of execution issued under the RTC's Order dated January 18, 2018.

Taking such circumstance into account, the Court issued on July 9, 2018 a Resolution⁷⁹ that reads in part:

After deliberating on the petition for *certiorari* with prayer for TRO and/or WPI in G.R. No. 236888, assailing the Order dated January 18, 2018 of the Regional Trial Court (RTC), Branch 66, Makati City in Civil Case No. 11-310, the Court, without necessarily giving due course thereto, further resolves to require the PCSO to **MANIFEST**:

- (a) Whether or not the lotto paper supplies subject of the Writ of the Execution dated January 22, 2018 have actually been delivered;
- (b) If the answer in the foregoing query is in the affirmative, whether or not the said delivery has been withdrawn or consumed, in any manner or extent, by the PCSO, and
- (c) Whether or not TMA posted a separate bond before the garnished amount of ₱707,223,555.44 was released.

In the event that no bond had been posted before the release of the garnished amount of P707,223,555.44, TMA is hereby ORDERED to post a reasonable bond in the amount of Three Hundred Fifty Million Pesos (P350,000,000.00), within five (5) days from notice. Should a bond been posted but is less than the amount of P350,000,000.00, it must then post a bond corresponding to the balance of the stated amount.

The subject of the foregoing inquiry are the lotto paper supplies that were covered by the Writ of Execution dated January 22, 2018, for which the amount of ₱707,223,555.44 was garnished against PCSO and thereafter paid through PNB Manager's Check dated February 23, 2018 to respondent TMA.

The Court takes note that in the Urgent Manifestation and Motion dated March 12, 2018 in G.R. No. 236888, respondent TMA admitted that it had yet to make a successful delivery of the lotto paper supplies subject

⁷⁷ Id. at 419-440.

⁷⁸ Id. at 468.

⁷⁹ Id. at 584-588.



of the Writ of Execution dated January 22, 2018, although it is ready and willing to do so. It alleged that the last unsuccessful attempt to make a delivery was done on March 7, 2018 at the PCSO warehouse in San Marcelino Street, Ermita, Manila but the same was refused acceptance. The reckoning point of the foregoing inquiry, therefore, is from March 12, 2018 until receipt of notice of this resolution.

The PCSO is given a **NON-EXTENDIBLE** period of five (5) days from receipt of this resolution within which to submit its Manifestation and to serve a copy thereof to respondent TMA.⁸⁰ (Emphasis supplied, citation omitted)

TMA was required under the same Resolution to file a Consolidated Comment on the petitions in G.R. Nos. 225457 and 236888. TMA filed a comment⁸¹ dated December 10, 2014 in G.R. No. 212143.

Meanwhile, on July 31, 2018, PCSO and TMA, through their respective counsels, filed a Joint Motion to Suspend Proceedings⁸² in view of the negotiations for a settlement agreement. On September 11, 2018, TMA filed a motion seeking additional time to post the bond required by this Court's July 9, 2018 Resolution. On September 14, 2018, TMA filed another motion⁸³ praying that this Court, in lieu of requiring the posting of a bond, order TMA to deliver to the PCSO lotto papers worth ₱707,223,555.44. On September 20, 2018, PCSO filed its Manifestation/Compliance⁸⁴ in accordance with this Court's July 9, 2018 Resolution, stating that TMA has not delivered the lotto paper supplies subject of the Writ of Execution dated January 22, 2018 in Civil Case No. 11-310; and that TMA has not posted a bond prior to the release of the garnished amount of ₱707,223,555.44.

On November 5, 2018, this Court issued a Resolution⁸⁵ which, *inter alia*, granted the parties' Joint Motion to Suspend Proceedings and TMA's motion for additional time to post the required bond, up to September 26, 2018. In a Motion dated November 23, 2018,⁸⁶ PCSO moved for the resumption of proceedings, citing the failure of the parties to agree upon an amicable settlement of the case. On December 20, 2018, PCSO filed a Motion and Manifestation⁸⁷ stating that TMA still has not posted the required bond.

⁸⁰ Id. at 586-587.

⁸¹ *Rollo* (G.R. No. 212143), pp. 329-367.

⁸² *Rollo* (G.R. No. 236888), pp. 594-599-A.

⁸³ Id. at 610-615.

⁸⁴ Id. at 628-631.

⁸⁵ Id. at 704-706.

⁸⁶ Id. at 707-711.

⁸⁷ Id. at 732-735.



On May 7, 2019, TMA filed its Consolidated Comment Ad Cautelam⁸⁸ for G.R. Nos. 225457 and 236888, by which it raised the following main arguments: (1) the issue in G.R. No. 225457 has been rendered moot by PCSO's use of the lotto papers that were delivered to it; (2) the writ of preliminary injunction that directed the implementation of the CJVA necessarily included the delivery of lotto papers and payment thereof; (3) the source of the lotto papers was TMA, through the JV, and from an existing thermal coating plant; (4) the trial court did not create a new contract between PCSO and TMA; and (5) PCSO's funds are not exempt from garnishment.

The Court's Ruling

Upon review, the Court finds merit in the consolidated petitions.

At the outset, the Court explains that it allows the petitioners' direct recourse from an order of the RTC in G.R. No. 236888, given the grounds that petitioners invoked to justify it. The urgency of the matter and the substantial amount involved, along with the pendency of the two other petitions that are closely related to the matter set forth in the third petition, justify a consolidation and warrant an immediate action and remedy that will yield results that are consistent with the pending SC petitions. More importantly, the merit that the Court finds in these interrelated petitions sufficiently supports the direct recourse from the order of the RTC, in the broader interest of justice. The following pronouncement of the Court in *Dy v. Judge Bibat-Palamos, et al.*⁸⁹ applies:

Under the principle of hierarchy of courts, direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket. Nonetheless, **the invocation of this Court's original jurisdiction to issue writs of certiorari has been allowed in certain instances on the ground of special and important reasons clearly stated in the petition**, such as, (1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case.⁹⁰ (Emphasis ours, citation omitted)

⁸⁸ Id. at 817-855.

⁸⁹ 717 Phil. 776 (2013).

⁹⁰ Id. at 782-783.



The Court likewise finds it worthy to mention that the present disposition is confined to the subjects of the RTC Orders from which the consolidated petitions arose, and the issues that are raised pertinent thereto. The trial court's decision that delved on the main issue in the specific performance case is not a subject of the present review, as any appeal therefrom has yet to reach the Court.

G.R. No. 212143

The question on the validity of the writs of execution issued by the trial court against PCSO funds and which are subjects of G.R. Nos. 225457 and 236888 first demands a scrutiny of the legality and propriety of the injunctive writs that were issued by the trial court under its Orders dated May 13, 2011, September 4, 2013 and November 6, 2013 which, in turn, are the core of G.R. No. 212143.

When the CA dismissed CA-G.R. SP No. 132655 that was instituted by the petitioners to assail the said three RTC's Orders, it relied mainly on two points. Specifically, the appellate court first referred to the requisites for the issuance of injunctive writs and declared that such requisites were sufficiently established and satisfied by TMA; and second, it emphasized the need to maintain the *status quo* between PCSO and TMA through the issuance of the injunctive writs. As the Court, however, takes into account settled rules and jurisprudence that apply to the provisional remedy vis-à-vis the facts and circumstances that attend these cases, it now finds it appropriate to reverse and nullify the CA Decision dated March 27, 2014 that affirmed the RTC.

A writ of preliminary injunction is an injunctive relief and preservative remedy for the protection of substantive rights and interests. Being a mere preservative remedy for the protection of substantive rights or interests, it is not a cause of action in itself but is merely a provisional remedy, an adjunct to a main suit.⁹¹ Its nature, purpose and requisites were further explained by the Court in *Lukang v. Pagbilao Development Corporation, et al.*,⁹² where it was held that:

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

⁹¹ *Spouses Dulnuan v. Metropolitan Bank & Trust Co.*, 763 Phil. 398, 405 (2015).

⁹² 728 Phil. 608 (2014).

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;
- (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.

Thus, a writ of preliminary injunction may be issued upon the concurrence of the following essential requisites, to wit: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. While a clear showing of the right is necessary, its existence need not be conclusively established. Hence, to be entitled to the writ, it is sufficient that the complainant shows that he has an ostensible right to the final relief prayed for in his complaint.⁹³ (Citation omitted)

Jurisprudence sets several other limits on the issuance of injunctive writs. For a court to decide properly on an application for TRO and/or writ of preliminary injunction, two things are to be looked into, viz.: (1) clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.⁹⁴ Moreover, the sole objective of a preliminary injunction must be to preserve the *status quo* until the merits of the case can be heard.⁹⁵ *Status quo* is defined as “the last actual peaceable uncontested status which preceded the controversy.”⁹⁶ The injunctive writs that were issued by the RTC in the suit for specific performance failed in these respects.

⁹³ Id. at 617.

⁹⁴ *Borlongan v. Banco de Oro*, 808 Phil. 505, 516 (2017).

⁹⁵ Id. at 517, citing *Levi Strauss (Phils.), Inc. v. Vogue Traders Clothing Co.*, 500 Phil. 438, 461-462 (2005).

⁹⁶ *Dolmar Real Estate Dev't. Corp., et al. v. CA 5th Div., et al.*, 570 Phil. 434, 439 (2008).

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To begin with, the RTC's injunctive writs appear to have been issued even in the absence of facts sufficient to establish the aforementioned requisites, which we reiterate to be that: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.

Requisites (a) and (b) are specific: the invasion of the right sought to be protected needs to be material and substantial, and the right of the complainant is clear and unmistakable. In this case, TMA invoked and premised its purported rights solely on the basis of the CJVA that it had earlier executed with PCSO, and the trial court took such proposition hook, line and sinker, as the RTC found it necessary to protect such rights by the continued implementation of the contract between the parties. This was the same justification provided by the CA when it sustained the orders of the RTC, prompting it to make the following pronouncement in its Decision⁹⁷ dated March 27, 2014:

[I]f we are to allow PCSO, [et] al. to suspend the CJVA without TMA's consent, and worse, without due process, the same would work injustice to the latter as it would be violative of its right under the CJVA. Its causing TMA irreparable injury, as a protected party under the contract, is evidently beyond dispute.⁹⁸

For the Court, however, the serious error of both the trial and appellate courts resulted from the simplistic approach by which they readily accepted TMA's claim of rights and interests, *i.e.*, by a plain reading of the CJVA, in a transaction that was purported to be a JV. The courts failed to sufficiently assess the contents and implications of the terms that were embodied in the agreement, which would have been the prudent thing to do when they determined the nature of TMA's claimed rights, especially since the validity of the contract was early on made an issue and was precisely the reason why PCSO opted to suspend its implementation. The petitioners' stand on the agreement's invalidity was even backed by the recent OGCC Opinion that extensively discussed the bases for such stance. The validity of the CJVA was a key issue in the main case, and the alleged right of TMA under the CJVA remained to be resolved.

If only the trial court made a closer look into the terms of the contract as against the parties' respective assertions, it would have readily determined the reasonable reservations on the validity of the CJVA, and that the claimed rights of TMA were far from being "clear and unmistakable." The absence

⁹⁷ *Rollo* (G.R. No. 212143), pp. 57-71.

⁹⁸ *Id.* at 69.

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of such clear and unmistakable right, as mandated by the second requisite for the valid issuance of an injunctive writ, then precludes the possibility of an invasion of a right that is material and substantial, as required by the first requisite.

Further into the requisites for injunctive writs, there must be an urgent and paramount necessity to prevent serious damage so that their issuance could be justified. “It must be proven that the violation sought to be prevented would cause an irreparable damage.”⁹⁹ As with the first two requisites, this circumstance was not proved in this case.

The purported damage to TMA by the suspension of the implementation of the CJVA was more apparent than real. It was not even established that the thermal coating plant intended to be set up under the parties’ JV agreement was already organized and operating at the time of the RTC’s issuance of the writs of preliminary injunction. Furthermore, any damage that TMA could sustain from the suspension of the CJVA’s implementation would be purely economic and is capable of reparation. The pronouncement of the Court in *Heirs of Melencio Yu, et al. v. Court of Appeals, et al.*¹⁰⁰ is instructive:

As the damages alleged by them can be quantified, it cannot be considered as “grave and irreparable injury” as understood in law:

It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial, and demonstrable. Here, there is no “irreparable injury” as understood in law. Rather, the damages alleged by the petitioner, namely, “immense loss in profit and possible damage claims from clients” and the cost of the billboard which is “a considerable amount of money” is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in *Social Security Commission v. Bayona*:

Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy. “An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement.” An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when

⁹⁹ *Phil. National Bank v. Castallo Technology Corp., et al.*, 684 Phil. 438, 443 (2012).

¹⁰⁰ 717 Phil. 284 (2013).

the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof.

Here, any damage petitioner may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages. Thus, a preliminary injunction is not warranted. As previously held in *Golding v. Balatbat*, the writ of injunction –

should never issue when an action for damages would adequately compensate the injuries caused. **The very foundation of the jurisdiction to issue the writ rests in the probability of irreparable injury, the inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.**¹⁰¹ (Emphasis ours, citation omitted)

Considering the circumstances, it was PCSO, in fact, that stood to sustain the substantial and irreparable injury by the continued implementation of the CJVA in the meantime that the main suit was pending, given the adverse and substantial impact that its terms could produce on the funds of the agency, as well as the damage, breach and corresponding liabilities that might result from the failure to observe procurement rules in case CJVA's illegality is confirmed. When it decided on the propriety and urgency of an issuance of the injunctive writs, the trial court should have similarly considered these interests of the PCSO, as the latter invoked a corresponding obligation to protect its funds from misuse. It is precisely the reason why injunctive writs are generally granted only after notice and hearing, as provided under Section 5, Rule 58 of the Rules of Court, in order to afford the other party the opportunity to be heard and refute the assertions of the applicants.

In *Bicol Medical Center v. Botor*,¹⁰² the Court reiterated:

[A] writ of preliminary injunction is an ancillary and interlocutory order issued as a result of an impartial determination of the context of both parties. It entails a procedure for the judge to assess whether the reliefs prayed for by the complainant will be rendered moot simply as a result of the parties' having to go through the full requirements of a case being fully heard on its merits. Although a trial court judge is given a latitude of discretion, he or she cannot grant a writ of injunction if there is no clear legal right materially and substantially breached from a *prima facie* evaluation of the evidence of the complainant. Even if this is present, the trial court must satisfy itself that the injury to be suffered is irreparable.¹⁰³ (Citation omitted)

¹⁰¹ Id. at 301-302.

¹⁰² G.R. No. 214073, October 4, 2017, 842 SCRA 143.

¹⁰³ Id. at 154.

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It is, therefore, clear that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the Orders dated May 13, 2011, September 4, 2013 and November 6, 2013. “[I]n the absence x x x of a legal right and the injury sustained by the plaintiff, an order of the trial court granting the issuance of an injunctive writ will be set aside, for having been issued with grave abuse of discretion.”¹⁰⁴

By issuing the injunctive writs, the trial court also granted remedies that fully correspond to the same prayer sought by TMA in the main action for specific performance, *i.e.*, an order upon the petitioners to fully and faithfully comply with the terms and provisions of the CJVA. This equated to a breach of another fundamental tenet on the matter of issuance of writs of preliminary injunction: that such writs should not be issued if it would amount to a prejudgment of the case by the trial court. As the Court held in *Rep. of the Phils. v. Sps. Lazo*:¹⁰⁵

The prevailing rule is that the courts should avoid issuing a writ of preliminary injunction that would in effect dispose of the main case without trial. Otherwise, there would be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which petitioners are inceptively bound to prove. Indeed, a complaint for injunctive relief must be construed strictly against the pleader.¹⁰⁶

On this point, we cannot help but discern in TMA’s actuations before the trial court and this Court, an apparent intent to “railroad” the enforcement of the CJVA through the issuance of writs of preliminary prohibitory and mandatory injunction; and subsequently, the relentless filing of motions seeking to compel PCSO to accept its forced deliveries and to make continued payments to it on the strength of said forced deliveries. This goes against the very nature of a preliminary injunction, which is meant to restore the parties to the situation prevailing *prior to the controversy*. At the risk of being repetitive, we reiterate the basic principle that preliminary injunctive writs cannot be issued if doing so will amount to granting the relief sought by the principal case. This is exactly what happened in the case at bar — as TMA sued for specific performance of the CJVA and then obtained a preliminary injunction to prevent PCSO from acquiring its lottery and gaming consumables from sources other than TMA, and to accept and pay for deliveries of said consumables from TMA. In a manner of speaking, TMA used the coercive powers under the writ of preliminary injunction to force the CJVA upon PCSO despite indications of irregularities and

¹⁰⁴ *Ong Ching Kian Chuan v. Court of Appeals*, 415 Phil. 365, 374-375 (2001).

¹⁰⁵ 744 Phil. 367 (2014).

¹⁰⁶ *Id.* at 401, citing *Phil. Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc.*, 512 Phil. 74, 90-91 (2005).

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illegalities which were the precise cause of PCSO's trepidation in enforcing the CJVA. This abuse of court processes cannot be countenanced by the Court.

G.R. Nos. 225457 and 236888

As the issues raised in G.R. Nos. 225457 and 236888 are similar and interrelated, the merits thereof shall be resolved jointly.

Involved in both petitions were orders of the RTC that directed the execution against PCSO's funds on the basis of the writs of preliminary mandatory and prohibitory injunction it had earlier issued, and which involved substantial amounts of ₱82,354,037.32 under the Order dated June 11, 2014 and ₱707,223,555.44 under the Order dated January 18, 2018. The Court has, however, fully explained the grounds for the nullification of the injunctive writs upon which the RTC's directive to pay or execute was premised. The inevitable result of such pronouncement is a similar nullification of the writs of execution that were issued on the basis thereof.

In any case, even granting that the issuance of the writs of execution were to be ruled upon on grounds entirely distinct from the nullification of the RTC Orders dated May 13, 2011, September 4, 2013 and November 6, 2013, the two petitions remain meritorious.

The questioned writs of execution clearly went beyond the purpose of the injunctive writs. *First*, it has been reiterated by the Court in this Decision that the sole objective of a preliminary injunction must be to preserve the *status quo* until the merits of the case can be heard.¹⁰⁷ *Status quo* is defined as "the last and actual peaceable uncontested status which preceded the controversy."¹⁰⁸ It bears mentioning that prior to the parties' conflict, the subject JV was still in its initial stage of implementation. There was as yet no clear showing of a thermal plant that was established by virtue of the JV, and from which PCSO could be obliged to source its paper products. There was also no showing that PCSO has been ordering and paying for its paper requirements from the JV. Rather than preserving the *status quo* corresponding to the "last and actual peaceable uncontested status" between the parties, the manner by which the trial court implemented its injunctive writs resulted in greater conflict and controversy.

¹⁰⁷ Id. at 83, citing *Levi Strauss (Phils.) Inc. v. Vogue Traders Clothing Company*, supra note 95.

¹⁰⁸ *Dolmar Real Estate Development Corporation v. CA*, supra note 96 at 439.

Second, by the terms of the writs of execution, the RTC missed the very terms of the CJVA that it sought to implement, as it wrongfully arrogated to itself the liberty of determining the parties' respective rights and obligations even as they lacked factual and legal bases.

It bears emphasis that the CJVA was specific on the establishment by the JV of the first thermal coating plant in the Philippines from which PCSO committed to obtain its thermal paper requirements. Absent sufficient proof that the intended plant had been built and already operating at the time of the issuance of the trial court's orders, TMA could not compel PCSO to source the paper products from it. Any other plant from which TMA could have produced or sourced its papers was beyond the scope of the agreement. Thus, even granting that the CJVA was valid, PCSO's commitment to TMA was limited to those that would be produced by the thermal coating plant that they both contemplated under their JV.

The RTC likewise improvidently determined and pegged in its Orders and writs of execution the substantial volume and price of papers that PCSO should receive from and pay to TMA. It substituted its own judgment to that of the actual need for thermal papers and betting slips of PCSO, which matter could have only been best determined by the agency. The trial court totally missed the provision in the CJVA that committed PCSO for its *paper requirements under specifications that it should establish*, particularly under paragraph 6.4 thereof that provides:

6.4. The TMA, through the JV, commits to provide PCSO with all its paper and other specialized paper products and consumables **requirements**, as mentioned above, **in accordance with the PCSO specifications**.¹⁰⁹ (Emphasis ours)

By the RTC's writs of execution, PCSO was, however, constrained to receive the goods at prices and in enormous volumes that were arbitrarily determined by the trial court. It was wrongful for the RTC to determine for itself such parameters; it simply lacked such capacity. Not even TMA could reasonably do it. In the end, the trial court imposed upon the agency an obligation that probably went way beyond its needs and commitments under the purported JV, and under terms that breached its best interests and inevitably adversely affected its funds.

It is quite ironic that the RTC repeatedly sought to justify its injunctive writs and writs of execution by claiming to avoid a disruption of PCSO's lotto operations, as it invoked the public interest that was vested in

¹⁰⁹ Rollo (G.R. No. 212143), p. 79.

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such activities. What the trial court, however, refused to recognize was the similar need to guard the agency from unlawful agreements and unnecessary disbursement of funds if such public interest were to be truly considered.

All told, the Court holds as void and of no force and effect the following writs issued by the RTC in Civil Case No. 11-310: (a) the Writ of Preliminary Injunction that directed the petitioners to immediately lift the suspension of the implementation of the CJVA, and to resume such implementation without delay; (b) the Writ of Preliminary Prohibitory Injunction that enjoined the petitioners to cease and desist from performing any act that would lead to or constitute cancellation of the CJVA and committing any other act that would nullify, in effect, the implementation of the CJVA, including but not limited to the conduct of any bidding for its lotto paper requirements; and (c) the Writs of Execution that were issued pursuant to the injunctive writs. Consequently, TMA must return to PCSO any and all amounts paid by the latter under such void writs.

It must be noted, however, that PCSO had already used up the ₱82,354,037.32 worth of thermal paper delivered to it as a consequence of the payment directed by the Orders dated June 11, 2014 and August 12, 2014.¹¹⁰ Meanwhile, this Court has yet to act on TMA's prayer in its September 14, 2018 motion that it be ordered to deliver to PCSO lotto papers worth ₱707,223,555.44 in lieu of the posting of the required bond. This bond requirement was embodied in the Resolutions of this Court dated July 9, 2018¹¹¹ and November 5, 2018;¹¹² and finds basis in Section 4(b) of Rule 58¹¹³ of the Rules of Court. Furthermore, per PCSO's December 20, 2018 Manifestation,¹¹⁴ TMA has indeed not posted the required bond. Given the mandatory nature of said bond requirement; the continuing refusal of TMA to comply with this Court's orders to post such bond; and the nullity of the Order dated January 18, 2018 which furnishes the ultimate basis for the posting of such bond, the Court is of the opinion that the posting of the bond would be superfluous, as the amount of ₱707,223,555.44, having been garnished on the basis of the null and void Order dated January 18, 2018, should be returned to PCSO instead.

The Court is mindful that the writs of preliminary injunction had been substituted by a writ of permanent mandatory and prohibitory injunction under the RTC's Decision dated December 5, 2017 that disposed of the main case in Civil Case No. 11-310, yet the foregoing pronouncements remain

¹¹⁰ *Rollo* (G.R. No. 225457), p. 760.

¹¹¹ *Rollo* (G.R. No. 236888), pp. 584-588.

¹¹² *Id.* at 704-706.

¹¹³ Under this section, a preliminary injunction may be granted only when, *inter alia*, the applicant files a bond, unless exempted by the court.

¹¹⁴ *Rollo* (G.R. No. 236888), pp. 732-735.

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crucial and material in determining the validity of the monetary claims against PCSO and the respective rights of the parties in the meantime that said main case has not yet been resolved with finality.

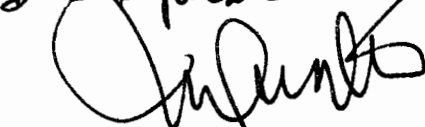
WHEREFORE, the Court rules as follows:

- (1) In G.R. No. 212143, the Petition for Review on *Certiorari* is **GRANTED**. The Court of Appeals' Decision dated March 27, 2014 in CA-G.R. SP No. 132655 is **REVERSED** and **SET ASIDE**. The Orders dated May 13, 2011, September 4, 2013 and November 6, 2013 of the Regional Trial Court of Makati City, Branch 59, in Civil Case No. 11-310 are **DECLARED VOID AND OF NO FORCE AND EFFECT**;
- (2) In G.R. No. 225457, the Petition for Review on *Certiorari* is **GRANTED**. The Court of Appeals' Decision dated February 4, 2016 and Resolution dated June 27, 2016 are **REVERSED** and **SET ASIDE**. The Orders dated June 11, 2014 and August 12, 2014 of the Regional Trial Court of Makati City, Branch 133 in Civil Case No. 11-310 are **DECLARED VOID AND OF NO FORCE AND EFFECT**; and
- (3) In G.R. No. 236888, the Petition for *Certiorari* is **GRANTED**. The Order dated January 18, 2018 of the Regional Trial Court of Makati City, Branch 66 in Civil Case No. 11-310 is **ANNULLED** and **SET ASIDE**.
- (4) TMA Group of Companies Pty Ltd. (now known as TMA Australia Pty Ltd.), and TMA Group Philippines, Inc., are **ORDERED** to **RETURN** the amount of Php707,223,555.44 representing the amount garnished under the Order dated January 18, 2018 of the Regional Trial Court of Makati City, Branch 66 in Civil Case No. 11-310.

SO ORDERED.

Meyer
ANDRES H. REYES, JR.
Associate Justice

WE CONCUR:

See separate concurring opinion


DIOSDADO M. PERALTA
Associate Justice
Chairperson

*I join the concurring opinion
of J. Peralta also*


MARVIC M.V.F. LEONEN
Associate Justice

(On wellness leave)
RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

ATTESTATION

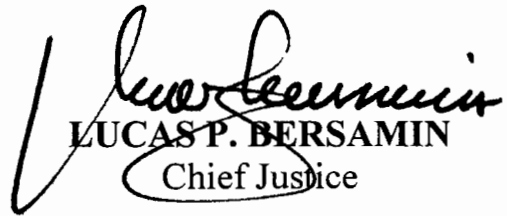
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.


LUCAS P. BERSAMIN
Chief Justice