



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 27 July 2020 which reads as follows:

“G.R. No. 252406 (*IKitchen, Inc., Winglip Chang, and/or Danny Pumarega v. Jeffrey U. Omega and the Court of Appeals (Former 8th Division)*). – After a perusal of the records of the case, the Court resolves to **DISMISS** the present petition¹ for failure of *IKitchen, Inc., Winglip Chang, and/or Danny Pumarega* (petitioners) to show that the Court of Appeals (CA) committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the urgent application for the issuance of the Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI).

A temporary restraining order and a writ of preliminary injunction both constitute temporary measures availed of during the pendency of the action. They are, by nature, ancillary because they are mere incidents in and are dependent upon the result of the main action. It is well-settled that the sole object of a temporary restraining order or a writ of preliminary injunction, whether prohibitory or mandatory, is to preserve the status *quo* until the merits of the case can be heard. They are usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status *quo* of the controversy before a full hearing can be had on the merits of the case. In other words, they are preservative remedies for the protection of substantive rights or interests, and, hence, not a cause of action in itself, but merely adjunct to a main suit.²

¹ See Petition for *Certiorari* dated June 29, 2020; *rollo*, pp. 3-33.

² *Carpio-Morales v. Court of Appeals*, 772 Phil. 672, 736 (2015), citing *The Incorporators of Mindanao Institute, Inc. v. The United Church of Christ in the Philippines*, 685 Phil. 21 (2012).

Rule 58 of the Rules of Court governs the provisional remedies of a TRO and a WPI. Section 3, Rule 58 of the said Rules enumerates the instances when a writ of preliminary injunction may be issued, to wit:

Section. 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.

Jurisprudence has likewise established that the following requisites must be proven first before a writ of preliminary injunction, whether mandatory or prohibitory, may be issued:

- (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.³

Thus, before the preventive writ may be issued, it is incumbent upon petitioners to show that the above-mentioned requisites are present. In this regard, petitioners failed. Notably, the grounds relied upon by them are merely speculative. The arguments that the surety or cash bond deposit with the National Labor Relations Commission (NLRC) might be released to Jeffrey Omega (Omega), and that in case of favorable judgment, restitution may no longer be possible are mere probabilities. There was no clear showing that petitioners have existing right ought to be protected by the issuance of an injunctive relief. Indeed, the CA acted in keeping with these standards and did not gravely abuse its discretion in not extending the temporary relief as prayed for by petitioners.

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,

³ *Bicol Medical Center v. Botor*, 819 Phil. 447, 458 (2017), citing *St. James College of Parañaque v. Equitable PCI Bank*, 641 Phil. 452, 466 (2010).

substantial and demonstrable.⁴ Here, there is no irreparable injury to speak of. As correctly pointed out by the CA, the injury claimed by petitioners, the implementation of the decision awarding backwages and attorney's fees to Omega, while the case is pending, can be easily subjected to mathematical computation. Verily, said injury does not fall within the concept of irreparable damage or injury warranting the issuance of an injunctive relief.

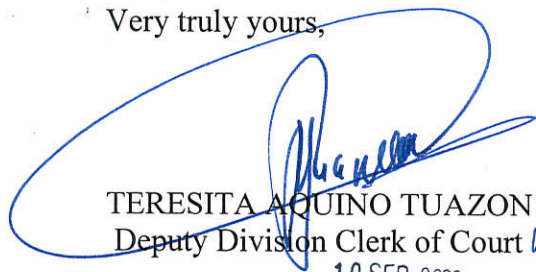
Although the Court does not discount the possible monetary loss, in terms of the judgment award, that petitioners may suffer should the merits of their petition be denied with finality, yet it is well to reiterate that they failed to show that they are entitled to a provisional injunctive relief or writ.

As regard petitioners' argument of unjust enrichment, the CA, in its February 12, 2020 Resolution,⁵ aptly held that the principle of unjust enrichment is not applicable in this case as the August 23, 2018 NLRC Decision⁶ had established the monetary right in favor of Omega. Thus, petitioners have a corresponding obligation to recognize the same until the said decision is reversed.

With the dismissal of the instant petition, petitioners' prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction is necessarily **DENIED**.

SO ORDERED."

Very truly yours,



TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *whh 9/10*
10 SEP 2020

⁴ *The City Government of Baguio v. Masweng*, G.R. No. 195905, July 4, 2018.

⁵ Penned by Associate Justice Tita Marilyn B. Payoyo-Villordon, with Associate Justices Ramon R. Garcia and Victoria Isabel A. Paredes, concurring; *rollo*, pp. 48-50.

⁶ Penned by Commissioner Agnes Alexis Lucero-De Grano, with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra, concurring; *id.* at 58-86.

DATO INCIONG & ASSOCIATES (reg)
Counsel for Petitioner
Unit 3101A, East Tower
Philippine Stock Exchange Centre
Exchange Road, Ortigas Center
1605 Pasig City

ATTY. NEAL J. CHUA (reg)
Counsel for Respondent
1636 Agoncillo Street
Malate, Manila

NATIONAL LABOR RELATIONS
COMMISSION (reg)
PPSTA Building, Banawe Street
corner Quezon Boulevard
1100 Quezon City
(NLRC LAC No. 06-002115-18)
(NLRC Case No. NCR-07-10250-17)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-1-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. SP No. 159098

Please notify the Court of any change in your address.
GR252406. 07/27/2020(157)URES 14/10