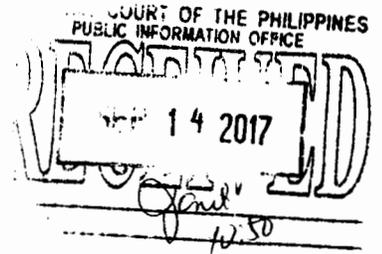




Republic of the Philippines  
**Supreme Court**  
 Manila



**FIRST DIVISION**

**AMA LAND, INC.,**  
 Petitioner,

**G.R. No. 202342**

Present:

- versus -

SERENO, C.J., Chairperson,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,\*  
 DEL CASTILLO, and  
 CAGUIOA, JJ.

**WACK WACK RESIDENTS’  
 ASSOCIATION, INC.,**  
 Respondent.

Promulgated:

**JUL 19 2017**

X-----X

**DECISION**

**CAGUIOA, J.:**

Before the Court is a petition<sup>1</sup> for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> dated June 14, 2012 (Decision) of the Court of Appeals<sup>3</sup> (CA) in CA-G.R. SP No. 118994, granting the petition filed by respondent Wack Wack Residents’ Association, Inc. (WWRAI), reversing and setting aside the October 28, 2010 and February 23, 2011 Orders<sup>4</sup> of the Regional Trial Court of Pasig City assigned in San Juan (Metropolitan Manila), Branch 264 (RTC) in Civil Case No. 65668, ordering the RTC to issue the injunctive relief prayed for by WWRAI pending the determination of the petition for the declaration of permanent easement of right of way, and directing WWRAI to amend the title and the averments in the petition before the CA by disclosing the names of its principals and bringing the action in a representative capacity.

\* Designated additional member per Raffle dated July 12, 2017 vice Associate Justice Estela M. Perlas-Bernabe.

<sup>1</sup> *Rollo* (Vol. I), pp. 3-49 (exclusive of Annexes).

<sup>2</sup> *Id.* at 51-65. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Sesinando E. Villon and Ricardo R. Rosario concurring.

<sup>3</sup> Special Former Tenth Division.

<sup>4</sup> *Rollo* (Vol. I), pp. 66-79. Both Orders were penned by Presiding Judge Leoncio M. Janolo, Jr.

**The Facts and Antecedent Proceedings**

The CA Decision summarized the facts as follows:

A commercial and residential building project located at Epifanio Delos Santos Avenue corner Fordham Street in Wack Wack Village, Mandaluyong City, was proposed by x x x AMA Land, Inc. (AMALI x x x) in [the] mid-1990s. As the latter proceeded to secure the needed licenses and permits for the construction of the project, the following were issued: Building Location Permit; Certificate of Locational Viability; Locational Clearance; Excavation and Ground Preparation Permit; Building Permit; Environmental Compliance Certificate; HLURB Certificate of Registration; and HLURB License to Sell.

On March 18, 1996, AMALI notified [WWRAI] – a registered homeowners' association of Wack Wack Village – of its intention to use Fordham Street as an access road and staging area of the project. As AMALI received no response from [WWRAI], the former temporarily enclosed the job site and set up a field office along Fordham Street. [WWRAI] claimed, however, that AMALI already converted part of the said street as barrack site and staging area even before March 18, 1996. All subsequent attempts of [WWRAI] to remove the said field office proved futile.

[On May 8, 1996,] AMALI then filed a petition before the [RTC], [wherein it seeks the temporary use of Fordham Street belonging to WWRAI as an access road to AMALI's construction site of its AMA Tower project pursuant to Article 656<sup>5</sup> of the Civil Code, and to establish a permanent easement of right of way in its favor over a portion of Fordham Street pursuant to Article 649<sup>6</sup> of the Civil Code. Aside from its prayer for the declaration of temporary and permanent easement of right of way in its favor over a portion of Fordham Street, AMALI is also] praying for: (a) a temporary restraining order (TRO) to immediately enjoin [WWRAI] from demolishing and removing the temporary field office, constructing a fence isolating Fordham Street, and preventing AMALI from gaining access to the construction site; (b) a writ of preliminary mandatory injunction directing [WWRAI] to allow AMALI to use Fordham Street as an access road and staging area; (c) an order making the TRO and the aforesaid writ permanent; and (d) an order declaring a permanent right of way in favor of AMALI.

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<sup>5</sup> CIVIL CODE, Art. 656. If it be indispensable for the construction, repair, improvement, alteration or beautification of a building, to carry materials through the estate of another, or to raise thereon scaffolding or other objects necessary for the work, the owner of such estate shall be obliged to permit the act, after receiving payment of the proper indemnity for the damage caused him.

<sup>6</sup> Id., Art. 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such encumbrance.

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.



In its answer, [WWRAI] contends that the project of AMALI violates the applicable zoning ordinances; that the licenses and permits issued in favor of AMALI were irregular and unlawful; that the project is a nuisance, and; that Epifanio Delos Santos Avenue can be utilized as the staging area of the project.

On July 24, 1997, the [RTC] granted the writ of preliminary mandatory injunction “directing [WWRAI] to allow [AMALI] to use Fordham Street through a temporary easement of right of way”.

In 1998, due to financial crisis, the construction of the project was put on hold and AMALI was constrained to finish merely the basement. Although AMALI asserted that “it continued to pay [WWRAI] for the use of Fordham Street”, [WWRAI] claimed otherwise.

In 2002, before the Regional Trial Court of Muntinlupa, Branch 256, AMALI filed a petition for corporate rehabilitation which was later on approved. Also, the said rehabilitation court in Muntinlupa directed the Office of the Building Official and/or Office of the City Engineer of Mandaluyong City to issue an Amended Building Permit in favor of AMALI. As a consequence, Building Permit No. 08-2011-0048 was issued.

As AMALI resume[d] the project, [WWRAI] filed in January 2010, an “Urgent Motion to Set for Hearing” its application for temporary restraining order and/or writ of preliminary injunction. The [RTC] heard the application and received the evidence presented by [WWRAI]. AMALI, on the other hand, failed to attend the proceedings. On October 28, 2010, the [RTC] ruled against the motion. Thus, it ordered the following:

WHEREFORE, [WWRAI]’s application for the issuance of temporary restraining order and/or writ of preliminary injunction is DENIED for lack of merit.

[AMALI] is directed to make representations with the Building Officials of Mandaluyong City on its application for permit to construct the building.

Attention of the Building Officials of Mandaluyong (sic) City is invited to the pending controversy of [the] parties involved, hence, his (sic) prompt final decision is suggested. x x x

A motion for reconsideration of the above order was filed but was denied on February 23, 2011. Hence, the x x x petition [for certiorari under Rule 65 before the CA].

On June 10, 2011, after a [clarificatory] hearing, [the CA] granted [WWRAI]’s application for a temporary restraining order[, and, accordingly, AMALI was commanded to cease and desist from further committing the act complained of, which is the construction of the commercial and residential condominium project located along EDSA corner Fordham Street in Wack Wack Village.<sup>7</sup>] Then, on July 28, 2011, the application of [WWRAI] for the issuance of a writ of preliminary

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<sup>7</sup> Rollo (Vol. I), p. 401.

injunction was granted as well pending resolution of the x x x petition for certiorari [before the CA].<sup>8</sup>

### ***The CA Ruling***

The CA rendered its Decision, the dispositive portion of which reads:

**WHEREFORE**, premises considered, the petition is **GRANTED**. The October 28, 2010 and February 23, 2011 Orders of the Regional Trial Court of Pasig City assigned in San Juan (Metropolitan Manila), Branch 264, in Civil Case No. 65668 is **REVERSED** and **SET ASIDE**. The latter court is hereby ordered to issue the injunctive relief prayed for by the petitioner Wack Wack Residents Association, Inc. pending determination of the petition for the declaration of **PERMANENT** easement of right of way.

Also, the petitioner is **DIRECTED** to **AMEND** the following: (a) the **TITLE**; and (b) the **AVERMENTS**, in the present petition by disclosing the names of its principals and bringing the action in a representative capacity.

**SO ORDERED.**<sup>9</sup>

Without filing a motion for reconsideration, AMALI filed the instant Rule 45 petition for review on *certiorari*.

### ***Issues***

AMALI raised the following issues in its Petition:

- (1) whether WWRAI is guilty of forum shopping;
- (2) whether WWRAI is entitled to a temporary restraining order and/or a writ of preliminary injunction;
- (3) whether the CA Decision amounts to a prejudgment of the merits of Civil Case No. 65668 (original petition for easement of right of way);
- (4) whether the CA Decision disturbed the *status quo* prevailing before the filing of the WWRAI petition; and
- (5) whether WWRAI is the real party in interest in this case.<sup>10</sup>

### ***The Court's Ruling***

AMALI's petition is meritorious.

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<sup>8</sup> Id. at 53-56.

<sup>9</sup> Id. at 63-64.

<sup>10</sup> Id. at 16.



The five issues raised by AMALI have, as core issue, the question of whether or not WWRAI is entitled to enjoin the construction of the AMA Tower pending determination of the original petition for the declaration of temporary and permanent easements of right of way over a portion of Fordham Street.

The Court in *Lukang v. Pagbilao Development Corporation*<sup>11</sup> reiterated the purpose and grounds for the issuance of a writ of preliminary injunction, viz.:

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 adjudicated. 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.<sup>12</sup>

Thus, to be entitled to the injunctive writ, the petitioner must show that: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by the act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.<sup>13</sup>

The grant or denial of the injunctive relief rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of fact left to the conclusive determination by such court; and the exercise of judicial

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<sup>11</sup> 728 Phil. 608 (2014).

<sup>12</sup> *Id.* at 617.

<sup>13</sup> *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas*, 684 Phil. 283, 292 (2012); citation omitted.



discretion by such court will not be interfered with, except upon a finding of grave abuse of discretion.<sup>14</sup>

In the issuance of the injunctive writ, grave abuse of discretion implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>15</sup>

Guided by the foregoing principles, the CA erred in finding that the RTC committed grave abuse of discretion in issuing its October 28, 2010 and February 23, 2011 Orders, denying WWRAI's application for the issuance of a temporary restraining order and writ of preliminary injunction.

The Court agrees with the RTC that:

[WWRAI]'s allegation that [its members'<sup>16</sup>] right to live in a peaceful, quiet and safe environment will be violated in the event that the condominium project of [AMALI] will be erected is untenable. The alleged noise and dust that may be caused by the construction is the natural consequence thereof. However, this annoyance that may be brought by the construction is not permanent in nature but is merely temporary and once the building is completed, [said members'] right to live in a peaceful, quiet and safe environment will be restored without noise and dust.

As to the allegations that [said members'] privacy may be invaded for the reason that they may be photographed or videotaped without their knowledge, these fears are merely speculative and cannot be taken into consideration.

As admitted by [WWRAI's] witness, the construction activity is suspended, hence, there is nothing to restrain x x x. There is no urgent and paramount necessity for the writ to prevent serious damage.<sup>17</sup>

Indeed, WWRAI was unable to convincingly demonstrate a clear and unmistakable right that must be protected by the injunctive writ. The apprehensions of its members are, as correctly ruled by the RTC, speculative and insufficient to substantiate the element of serious and irreparable damage.

As to the issue of the legality of the construction of AMA Tower, the Resolution<sup>18</sup> in NBCDO NO. 12-11-93 MAND CITY dated March 29, 2012

<sup>14</sup> Id. at 292-293; citations omitted.

<sup>15</sup> Id. at 293; citation omitted.

<sup>16</sup> Per RTC Order dated October 28, 2010, WWRAI presented the judicial affidavits of four of its members, namely: Milagros Santos, Victoria Huang, Albert Montilla and Miguel Angelo Sarte Silverio; *rollo* (Vol. I), p. 69.

<sup>17</sup> RTC Order dated October 28, 2010, id. at 74-75.

<sup>18</sup> *Rollo* (Vol. II), pp. 890-897.

issued by the Office of the Secretary of the Department of Public Works and Highways (DPWH), finding “the issuance of Amended Building Permit No. 08-2011-0048 for [AMALI’s] proposed thirty-four (34) storey with seven (7) basement level AMA Tower Residences project is in accordance with the provisions of the National Building Code of the Philippines (P.D. 1096) and its IRR x x x”<sup>19</sup> carries the presumption of regularity as having been issued pursuant to official duty.<sup>20</sup> The authority to administer and enforce the provisions of the National Building Code, and the power to appoint Building Officials throughout the country, including Metro Manila, pertain to the Secretary of Public Works and Highways.<sup>21</sup> Until sufficiently rebutted, the determination of the Secretary of DPWH stands. Besides, the determination of the “special and affirmative defense” that the construction of the AMA Tower is illegal, which WWRAI raised in its Answer,<sup>22</sup> will be finally settled after the parties have adduced their evidence in chief. The same holds true with respect to the assertion of WWRAI that the construction of the AMA Tower is a nuisance. This issue can only be resolved after trial on the merits. The RTC also noted that no less than the Department of Environment and Natural Resources issued an Environmental Compliance Certificate in favor of AMALI and “it is clear that no question remains on the legality of [AMALI’s] construction.”<sup>23</sup>

However, the denial of WWRAI’s application for a writ of preliminary injunction against the construction of the AMA Tower does not necessarily translate to AMALI’s entitlement to a temporary easement of right of way over a portion of Fordham Street belonging to WWRAI for use as an access road and staging area of its AMA Tower project before the resolution of its petition for declaration of easement of right of way (original petition) by the RTC. Stated differently, WWRAI cannot be compelled **at this stage of the proceedings** to grant AMALI a temporary legal easement of right of way over a portion of Fordham Street.

In its original petition, AMALI alleges two distinct causes of action, namely:

3.0  
FIRST CAUSE OF ACTION  
 (DECLARATION OF TEMPORARY EASEMENT OF RIGHT OF WAY)

x x x x

3.2 [AMALI]’s use of Fordham Street belonging to [WWRAI] as an access road to [AMALI]’s construction site is indispensable to the construction of AMA TOWER Project.

<sup>19</sup> Id. at 897.

<sup>20</sup> See RULES OF COURT, Rule 131, Sec. 3(m).

<sup>21</sup> *Tapay v. Cruz*, 264 Phil. 850, 856 and 860 (1990).

<sup>22</sup> *Rollo* (Vol. I), pp. 330-347.

<sup>23</sup> RTC Order dated July 24, 1997, id. at 353.

- 3.3 [AMALI]'s property is so situated that the temporary site construction office and the temporary ingress and egress for the construction workers can only be created with least prejudice in Fordham Street. The Dolmar property on the right side of [AMALI]'s property is an existing commercial structure while the Sta. Cruz's at the back is a residential property. The front portion of [AMALI]'s property is facing a main thorough fare[, Epifanio de los Santos Avenue (EDSA),] and will be a part of the construction itself.
- 3.4 [AMALI] is ready, willing and able to pay the proper indemnity.
- 3.5 Article 656 of the New Civil Code provides that:

“Art. 656. If it be indispensable for the construction, repair, improvement, alteration or beautification of a building, to carry materials through the estate of another, or to raise thereon scaffolding or other objects necessary for the work, the owner of such estate shall be obliged to permit the act, after receiving payment of the proper indemnity for the damage caused him. (5691)”

#### 4.0

### SECOND CAUSE OF ACTION (DECLARATION OF PERMANENT EASEMENT OF RIGHT OF WAY)

x x x x

- 4.2 The property of [AMALI] where the site of AMA TOWER is situated is surrounded by estates of others. A commercial building of Dolmar is on the right side of [AMALI]'s property and a residential property of Sta. Cruz is at the back. The front portion of [AMALI]'s property is facing a main thorough fare.
- 4.3 The property of [AMALI] has no adequate outlet to a public highway. The front portion of the property facing EDSA is a difficult and dangerous outlet not only for [AMALI] but for the public as well.
- 4.4 The use of small portion of Fordham Street near EDSA is a point least prejudicial to [WWRAI].
- 4.5 [AMALI] is ready, willing and able to pay the proper indemnity.
- 4.6 Article 649 of the New Civil Code provides that:

“Art. 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

x x x x”<sup>24</sup>

<sup>24</sup> Petition before the RTC, id. at 316-318.

First of all, the CA Decision categorically found that WWRAI is the owner of the subject Fordham Street as this was expressly admitted by AMALI and pursuant to the RTC's pre-trial order.<sup>25</sup> Thus, inasmuch as AMALI prays for the grant of both temporary and permanent easements of right of way over a portion of Fordham Street against WWRAI in the original petition, WWRAI should be deemed to be the owner of the servient estate. Simply stated, WWRAI, and not its members, is the real party in interest in this case. To be sure, even AMALI itself filed the original petition against WWRAI and not against the latter's members.

Secondly, the question of whether or not AMALI, as owner of the dominant estate, may validly claim against WWRAI a compulsory permanent right of way under Articles 649 and 650<sup>26</sup> of the Civil Code, will depend on a finding that AMALI has established the existence of the following requisites, namely: (1) the dominant estate is surrounded by other immovables; (2) it is without adequate outlet to a public highway; (3) after the proper indemnity has been paid; (4) the isolation was not due to the proprietor of the dominant estate's own acts; and (5) the right of way claimed is at a point least prejudicial to the servient estate.<sup>27</sup> A sixth requisite is that the right of way must be absolutely necessary for the normal enjoyment of the dominant estate by its owner.<sup>28</sup> There must be a real, not fictitious or artificial, necessity for the right of way,<sup>29</sup> and the right cannot be claimed merely for the convenience of the owner of the enclosed estate.<sup>30</sup> The burden of proving the existence of the foregoing requisites lies on AMALI, being the owner of the dominant estate.<sup>31</sup> **This issue has been correctly recognized by the CA as still pending determination by the Regional Trial Court of Pasig City assigned in San Juan (Metropolitan Manila) Branch 264, in Civil Case No. 65668.**

In turn, as regards the question of whether AMALI is entitled to a temporary easement of right of way, Article 656 of the Civil Code provides that this can be granted only after the payment of the proper indemnity by AMALI, the owner of the dominant estate; and only if AMALI has established that the easement is indispensable for the construction of its AMA Tower Project.

The Court is aware that the RTC had previously granted on July 24, 1997, a writ of preliminary mandatory injunction "directing [WWRAI] to allow [AMALI] [to] use Fordham Street x x x through a temporary easement

<sup>25</sup> *Rollo* (Vol. I), p. 63.

<sup>26</sup> CIVIL CODE, Art. 650. The easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

<sup>27</sup> See *Costabella Corp. v. Court of Appeals*, 271 Phil. 350, 358 (1991).

<sup>28</sup> De Leon and De Leon, *COMMENTS AND CASES ON PROPERTY* (2011 ed.), p. 520, citing *Rivera v. Intermediate Appellate Court*, 251 Phil. 287 (1989).

<sup>29</sup> *Ramos, Sr. v. Gatchalian Realty, Inc.*, 238 Phil. 689, 698 (1987).

<sup>30</sup> De Leon and De Leon, *COMMENTS AND CASES ON PROPERTY*, supra note 28, at 519.

<sup>31</sup> See *Costabella Corp. v. Court of Appeals*, supra note 27.

of right of way [and set the] compensation for the use of Fordham Street x x x to Fifty Thousand Pesos (P50,000.00) per month of use.”<sup>32</sup>

As to how the RTC arrived at the ₱50,000.00 monthly compensation and the conclusion that the use of Fordham Street is indispensable in the construction of the AMA Tower, the Court is perplexed given the admission in the July 24, 1997 Order of the RTC that “the parties waived presentation of witnesses and submitted the incident [prayer for issuance of a writ of preliminary mandatory injunction] for resolution based on their respective pleadings.”<sup>33</sup> Unlike the RTC Order dated October 28, 2010 which denied WWRAI’s application for a temporary restraining order and writ of preliminary injunction where the judicial affidavits executed by four members of WWRAI were summarized, the RTC Order dated July 24, 1997 which granted a temporary easement of right of way in favor of AMALI simply concluded that:

Article 656 of the New Civil Code provides:

“If it be indispensable for the construction, repair, improvement, alteration or beautification of a building, to carry materials through the estate of another, or to raise thereon scaffolding or other objects necessary for the work, the owner of such estate shall be obliged to permit the act, after receiving payment of the proper indemnity for the damage caused him.”

[WWRAI’s] obligation is undoubtedly established by the above provision.

From a map of the area in question (Annex “G” of [AMALI’s] Reply), it is unmistakable that Fordham Street in Wack Wack Village, which is owned by [WWRAI], is the only road which [AMALI] is able to use with respect to the necessary preparations relative to the construction project.<sup>34</sup>

The RTC did not even factor in its Order the fact that the front portion of AMALI’s property where the proposed AMA Tower project is situated is facing EDSA, which AMALI describes as a main thoroughfare. The said Order also fails to identify the specific portion of Fordham Street that would be subject to the temporary easement of right of way.

Not only is the July 24, 1997 Order granting the temporary easement of right of way short in factual basis, it is a virtual prejudgment of AMALI’s “FIRST CAUSE OF ACTION (DECLARATION OF TEMPORARY EASEMENT OF RIGHT OF WAY).”

<sup>32</sup> Order of the RTC dated July 24, 1997, *rollo* (Vol. I), p. 354.

<sup>33</sup> *Id.* at 349.

<sup>34</sup> *Id.* at 353.

The Court reiterated in *Searth Commodities Corp. v. Court of Appeals*<sup>35</sup> that:

The prevailing rule is that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial. x x x There would in effect 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 the petitioners are ineptly bound to prove.<sup>36</sup>

The RTC erred and/or gravely abused its discretion when it granted AMALI's application for preliminary mandatory injunction because, in so doing, it prematurely decided disputed facts and disposed of the merits of the case without the benefit of a full-blown trial wherein testimonial and documentary evidence could be fully and exhaustively presented, heard and refuted by the parties.<sup>37</sup> As such, the RTC Order dated July 24, 1997 insofar as it granted a temporary easement of right of way over Fordham Street in favor of AMALI is concerned is declared void and of no force and effect.<sup>38</sup> The RTC lacked jurisdiction to declare a temporary easement of right of way arising from Article 656 of the Civil Code without a full-blown trial.

Article 656 requires proof of indispensability and receipt of payment of the proper indemnity for the damage caused by the owner of the dominant estate before the owner of the servient estate can be compelled to grant a temporary easement of right of way. It appears from the *rollo* that AMALI presented no witnesses to establish these prerequisites. Being preconditions, they are akin to suspensive conditions that must be fulfilled before the obligation on the part of WWRAI to allow the easements can arise. Until the preconditions are met, AMALI has no legal basis to use a portion of Fordham Street as an access road and staging area of its AMA Tower project. To allow AMALI to do so would be in contravention of the legal provisions on the establishment and grant of the legal easement of right of way under the Civil Code.

The issue of forum shopping becomes irrelevant in the light of the Court's ruling that the CA erred in finding that the RTC acted with grave abuse of discretion in issuing its Orders dated October 28, 2010 and February 23, 2011. This issue is also immaterial in the determination of AMALI's temporary use of a portion of Fordham Street as an access road and staging area of its AMA Tower project. Even on the assumption that the Court finds WWRAI guilty of forum shopping, the burden of AMALI to establish the preconditions discussed above so as to entitle it to a temporary legal easement subsists.

<sup>35</sup> G.R. No. 64220, March 31, 1992, 207 SCRA 622.

<sup>36</sup> Id. at 629-630; cases cited omitted.

<sup>37</sup> See *Republic v. Spouses Lazo*, 744 Phil. 367, 400-401 (2014).

<sup>38</sup> See id. at 402.

Furthermore, the Court finds no compelling need to resolve the issue of prejudgment of the main case or the original petition in view of the granting of the present petition and the declaration as void the granting of a writ of preliminary mandatory injunction on the temporary easement of right of way under RTC Order dated July 24, 1997.

To stress, the temporary easement of right of way under Article 656 of the Civil Code, similar to the permanent easement of right of way pursuant to its Articles 649 and 650, can only be granted **after** proof of compliance with the prerequisites set forth in the articles duly adduced during a full-blown trial.

Lastly, the *status quo* prevailing before the filing of the WWRAI petition before the CA is not the *status quo ante* that must be preserved. The object of a writ of preliminary injunction is to preserve the *status quo*, which is the last peaceable uncontested status that preceded the pending controversy.<sup>39</sup> Thus, the proper understanding of the *status quo ante* should refer to the situation prior to AMALI's unauthorized use of a portion of Fordham Street as an access road and staging area of its AMA Tower project.

**WHEREFORE**, premises considered, the petition for review on *certiorari* in G.R. No. 202342 is hereby **GRANTED**, and the Court of Appeals' Decision dated June 14, 2012 in CA-G.R. SP No. 118994 is hereby **REVERSED** and **SET ASIDE**. The October 28, 2010 and February 23, 2011 Orders of the Regional Trial Court of Pasig City assigned in San Juan (Metropolitan Manila), Branch 264 in Civil Case No. 65668 are **REINSTATED**, and its Order dated July 24, 1997 insofar as it granted a temporary easement of right of way over Fordham Street in favor of petitioner AMA Land, Inc. is concerned is declared **VOID** and of **NO EFFECT**. The said Regional Trial Court is **DIRECTED** to proceed with the trial of the case with dispatch.

**SO ORDERED.**

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

<sup>39</sup> *Searth Commodities Corp. v. Court of Appeals*, supra note 35, at 630; cases cited omitted.

WE CONCUR:



**MARIA LOURDES P. A. SERENO**

Chief Justice

Chairperson

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
Associate Justice

*Mariano C. Del Castillo*  
**MARIANO C. DEL CASTILLO**  
Associate Justice

**CERTIFICATION**

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



**MARIA LOURDES P. A. SERENO**

Chief Justice

