

Cayabyab (Mayor Cayabyab) upon posting of a bond to be determined by the RTC.

The Facts

Respondent Jaime C. Dimson (Dimson) is the owner of a poultry farm located in Barangay Prado Siongco, Lubao, Pampanga (subject poultry farm) which had been operating for more than 30 years. In January 2014, he applied for a barangay clearance with the office of petitioner Prado Siongco Barangay Chairman Angelito L. David (Chairman David), preparatory to his application for a business permit, and was informed that the issuance thereof is conditioned on a prior ocular inspection of the subject poultry farm by the Office of the Mayor of Lubao, Pampanga, Mayor Cayabyab. However, despite the conduct of an ocular inspection, Chairman David refused to issue the clearance; hence, no business permit was issued in favor of Dimson.⁶

On April 29, 2014, Dimson received⁷ a CDO⁸ dated April 28, 2014 from the Office of Mayor Cayabyab, directing him to desist from further conducting any poultry farming on the grounds of: (a) lack of a Barangay Business Permit and a Mayor's Permit; (b) lack of a pollution control officer; (c) foul odor being emitted by the subject poultry farm that offended passing motorists, and for which complaints were filed by those affected; and (d) the said poultry farm being situated only five (5) meters away from the national road, in violation of the 500-meter minimum distance requirement under the Code of Sanitation of the Philippines (Sanitation Code).⁹

In his motion for reconsideration,¹⁰ Dimson denied that there was foul odor coming from his poultry farm, at the same time, manifesting that he had already employed a pollution control officer.¹¹ Said motion was denied by Lubao Acting Mayor Robertito V. Diaz in a letter¹² dated May 20, 2014. Dissatisfied, Dimson filed another motion for reconsideration,¹³ contending that the subject poultry farm is not a nuisance *per se* that can be abated by the local government without the intervention of the courts.¹⁴ The motion was denied by Mayor Cayabyab in a letter¹⁵ dated June 13, 2014, which clarified that the CDO was primarily issued on the lack of the requisite Barangay Business Permit and Mayor's Permit. Thereafter, a Closure

⁶ *Rollo*, p. 26.

⁷ *Id.* at 27.

⁸ Records, Vol. I, p. 42.

⁹ *Id.*

¹⁰ See Motion for Reconsideration with Motion to Lift Cease and Desist Order dated May 5, 2014; *id.* at 43-48.

¹¹ See *id.* at 44-46. See also *rollo*, p. 27.

¹² Records, Vol. I, pp. 49-52.

¹³ See Manifestation with Second Motion for Reconsideration dated June 2, 2014; *id.* at 53-58.

¹⁴ See *id.* at 55. See also *rollo*, p. 27.

¹⁵ Records, Vol. I, p. 59.

Order¹⁶ dated June 20, 2014 was issued by Mayor Cayabyab effectively shutting down the subject poultry farm.¹⁷

The RTC Proceedings

Aggrieved, Dimson filed a Petition for *Certiorari, Mandamus, Prohibition* (With Application for Preliminary Mandatory Injunction)¹⁸ and prayed for the issuance of a TRO against Mayor Cayabyab and Chairman David (petitioners) before the RTC of Guagua, Pampanga, docketed as Sp. Civil Case No. G-14-685, which was raffled to Branch 52. He maintained that his poultry farm is not a nuisance *per se* that can be summarily abated; hence, respondents grossly abused their discretion when they withheld his permits, and issued the CDO and Closure Order.¹⁹

In their defense,²⁰ respondents averred that: (a) the non-issuance of the Barangay Business Permit was based on valid grounds as there were written complaints against the operation of the poultry farm, and a public hearing was conducted thereon; (b) the non-issuance of the Mayor's Permit was justified considering the lack of a Barangay Business Permit; (c) the issuance of the CDO and Closure Order was justified and in accordance with due process; and (d) the poultry farm violated not only the Sanitation Code but also the Comprehensive Land Use Plan and Zoning Ordinance requiring poultry farms to be 500 meters away from the major roads and/or highways.²¹

In an Order²² dated October 2, 2014, the RTC denied Dimson's application for TRO for failure to establish a clear and unmistakable right to the said issuance and to show that he will suffer irreparable injury. Moreover, the RTC opined that the issue of whether or not petitioners have the right to order the closure of the subject farm is best threshed out in the main case. It likewise ruled that the TRO can no longer serve its purpose as the act sought to be restrained was already *fait accompli*, since a notice of closure was already posted on the concrete wall of the subject poultry farm effective September 29, 2014.²³

Due to the Presiding Judge's voluntary inhibition in the case, the same was re-raffled to Branch 51 of the same RTC.²⁴

¹⁶ Id. at 60.

¹⁷ See *rollo*, p. 27.

¹⁸ Dated June 27, 2014. Records, Vol. I, pp. 16-39.

¹⁹ See id. at 35-36.

²⁰ See Answer with Special Affirmative Defense and Counterclaim with Opposition to Issuance of Provisional Remedies dated September 11, 2014; records, Vol. II, pp. 358-365.

²¹ See id. at 362.

²² *Rollo*, pp. 17-21. Issued by Judge Jonel S. Mercado.

²³ See id. at 20-21.

²⁴ Id. at 28. See also Order dated October 7, 2014; records, Vol. II, pp. 620-625.

Dimson filed a motion for reconsideration which was, however, denied in an Order²⁵ dated December 22, 2014. Unperturbed, Dimson filed a petition for *certiorari*²⁶ before the CA, seeking to set aside the Orders dated October 2, 2014 and December 22, 2014, docketed as CA-G.R. SP No. 138699.²⁷

The CA Ruling

In a Decision²⁸ dated December 18, 2015, the CA granted the petition, and directed the RTC to issue a TRO against the implementation of the CDO and the Closure Order of Mayor Cayabyab.²⁹

The CA ruled that the RTC gravely abused its discretion in denying Dimson's application for a TRO which was essentially rooted on a determination of whether the subject poultry farm is a nuisance *per se* or a nuisance *per accidens*. Considering that poultry farming is a legitimate business, by its nature alone, the same can only be a nuisance *per accidens* if in the course of its operations, it should become objectionable to such extent that it offends some laws, public policy, or should become a danger to public health and welfare. It may only be abated on the strength of judicial fiat.³⁰

Consequently, the CA held that Dimson was able to establish the concurrence of the requisites for the issuance of injunctive relief, to wit: (a) he has the right to engage in poultry farming; (b) the issuance of the CDO and the closure order would work injustice to him; and (c) the issuance of the said orders which amounted to an abatement of his poultry enterprise without the required judicial intervention violates his rights, which cannot be justified under the general welfare clause.³¹

The CA likewise held that the issuance of a TRO cannot be denied on the ground of *fait accompli* since the acts complained of is a continuing prohibition on an otherwise legitimate business. Hence, Dimson could still resume his operations in the meantime, or until a final decision on the merits of the main case is rendered by the RTC, and the status *quo ante* may still be attained, and, thereafter, preserved.³²

Dissatisfied, petitioners filed a motion for reconsideration,³³ which

²⁵ *Rollo*, pp. 22-23. Penned by Presiding Judge Merideth D. Delos Santos-Mailig.

²⁶ Not attached to the *rollo*.

²⁷ See *rollo*, p. 25.

²⁸ *Id.* at 25-36.

²⁹ *Id.* at 35.

³⁰ See *id.* at 32-33.

³¹ *Id.* at 34.

³² See *id.* at 34-35.

³³ Dated January 5, 2016; *id.* at 37-40.

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was, however, denied in a Resolution³⁴ dated March 21, 2016; hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in directing the issuance of a TRO against the implementation of the CDO and the Closure Order of Mayor Cayabyab.

The Court's Ruling

The Court grants the petition.

“A writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive rights and interests.”³⁵ To be entitled to the injunctive writ, the applicant must show that: (a) there exists a clear and unmistakable right to be protected; (b) this right is directly threatened by an act sought to be enjoined; (c) the invasion of the right is material and substantial; and (d) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage. The grant or denial of an injunctive relief in a pending case rests on the sound discretion of the court since the assessment and evaluation of evidence towards that end involve findings of fact left for the conclusive determination of the said court.³⁶ “Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.”³⁷ The burden is, thus, on the applicant to show that there is meritorious ground for the issuance of a TRO in his favor,³⁸ since an application for injunctive relief is construed strictly against him.³⁹ Here, Dimson failed to sufficiently show the presence of the requisites to warrant the issuance of a TRO against the CDO and the Closure Order of Mayor Cayabyab.

Preliminarily, it must be clarified that contrary to the CA's ruling,⁴⁰ the grant or denial of Dimson's application for TRO was not essentially rooted on a determination of whether the subject poultry farm is a nuisance *per se* or a nuisance *per accidens*, but rather on whether or not there was an ostensible showing of a sufficient justification for the issuance of the CDO and the Closure Order. Corollary is the issue of whether or not there were *prima facie* valid reasons for the withholding of the barangay clearance,

³⁴ Id. at 43.

³⁵ *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas*, 684 Phil. 283, 291-292 (2012).

³⁶ Id. at 292-293.

³⁷ Id. at 293.

³⁸ Id.

³⁹ See *St. James College of Parañaque v. Equitable PCI Bank*, 641 Phil. 452, 471 (2010).

⁴⁰ See *rollo*, p. 32.

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which is a prerequisite to the renewal of Dimson's business permit to operate.

A business permit must be secured from the municipal business permits and licensing office in order for the business to legally operate in the locality.⁴¹ While poultry farming is admittedly a legitimate business, it cannot operate without a business permit, which expires on the 31st of December of every year and must be renewed before the end of January of the following year.

In the present case, there is no showing that Dimson filed any application for renewal of his business permit to operate the subject poultry farm in 2014, apparently due to his failure to secure the necessary barangay clearance which was not issued based on complaints of foul odor being emitted by the said farm. Records show that complaints from neighboring barangays were received by the office of Mayor Cayabyab bewailing the foul odor coming from the said farm,⁴² which was confirmed upon ocular inspection conducted by the Health and Sanitation Office of the Municipality of Lubao, Pampanga.⁴³ Settled is the rule that acts of public officers are presumed to be regular and valid, unless sufficiently shown to be otherwise.⁴⁴ In this case, Dimson was unable to refute the finding that foul odor is being emitted by his farm, having failed to present the inspection report of the sanitary officer who purportedly did not note any such foul smell in the farm.⁴⁵ Not having passed the necessary sanitation standard, there was, therefore, a *prima facie* valid reason for the withholding of the required barangay clearance, which is a prerequisite to the renewal of Dimson's business permit to operate.

Having failed to apply for and secure the necessary business permit to operate in 2014 on account of his inability to obtain the required barangay clearance due to non-compliance with a requirement standard,⁴⁶ Dimson may not legally operate in the Municipality of Lubao, Pampanga, thereby, warranting the issuance by Mayor Cayabyab of the CDO and the Closure Order. Accordingly, no error, much less grave abuse of discretion can be ascribed on the RTC in denying Dimson's application for the issuance of a TRO against the said orders. In the absence of a business permit, Dimson has no clear legal right to resume his operations pending final determination by the RTC of the merits of the main case for *certiorari*, *mandamus*, and

⁴¹ See Item 3.3 of Department of Interior and Local Government-Department of Trade and Industry (DILG-DTI) Joint Memorandum Circular No. 01, series of 2010, dated August 6, 2010.

⁴² See records, Vol. II, pp. 384-387 and 390-411.

⁴³ See *rollo*, p. 9.

⁴⁴ *Secretary Boncodin v. National Power Corp. Employees Consolidated Union (NECU)*, 534 Phil. 741, 759 (2006).

⁴⁵ See records, Volume I, p. 33.

⁴⁶ Under Item 4.2.2 (1) of DILG-DTI Joint Memorandum Circular No. 01, series of 2010, dated August 6, 2010, inspections to check compliance with all the requirement standards, *i.e.*, zoning and environment ordinances, building and fire safety, health and sanitation regulations, will be undertaken within the year after the issuance of the business permit.

prohibition. A clear legal right means one clearly founded in or granted by law or is enforceable as a matter of law, which is not extant in the present case. It is settled that the possibility of irreparable damage without proof of an actual existing right is not a ground for the issuance of an injunctive relief.⁴⁷

In fine, it was grave error for the CA to order the issuance of a TRO against the implementation of the CDO and the Closure Order of Mayor Cayabyab. A court may issue injunctive relief against acts of public officers only when the applicant has made out a case of invalidity or irregularity strong enough to overcome the presumption of validity or regularity, and has established a clear legal right to the remedy sought,⁴⁸ which was not shown here.

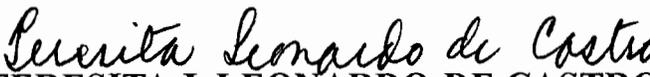
WHEREFORE, the petition is **GRANTED**. The Decision dated December 18, 2015 and the Resolution dated March 21, 2016 of the Court of Appeals in CA-G.R. SP No. 138699 are hereby **SET ASIDE**.

SO ORDERED.

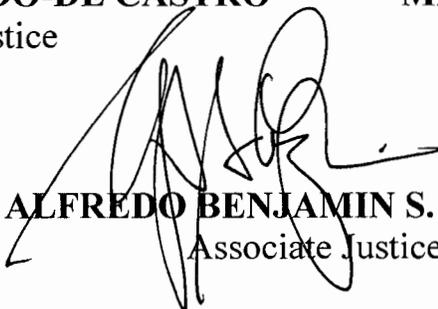

ESTELA M. BERLAS-BERNABE
 Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
 Chief Justice
 Chairperson


TERESITA J. LEONARDO-DE CASTRO
 Associate Justice

On Official Leave
MARIANO C. DEL CASTILLO
 Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

⁴⁷ See *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas*, supra note 35, at 293.

⁴⁸ See *Secretary Boncodin v. National Power Corp. Employees Consolidated Union (NECU)*, supra note 44, at 759-760.

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