



Republic of the Philippines  
**Supreme Court**  
 Manila  
**FIRST DIVISION**

SUPREME COURT OF THE PHILIPPINES  
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**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 11, 2015**, which reads as follows:*

**G.R. No. 161737 – MONDRAGON LEISURE AND RESORTS CORPORATION, MONDRAGON INTERNATIONAL PHILIPPINES, INC., and MONDRAGON SECURITIES CORPORATION, Petitioners, v. CLARK DEVELOPMENT CORPORATION (CDC), BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA), RIZALINO S. NAVARRO, in his capacity as Chairman of the Board of CDC, EMMANUEL Y. ANGELES, in his capacity as President and Chief Executive Officer of CDC, BENIGNO N. RICAFORT, in his capacity as Chairman of Special Committee on MLRC Privatization of CDC, VICTOR JOSE I. LUCIANO, in his capacity as Chairman of Special Bids and Awards Committee of CDC, and RUFO B. COLAYCO, in his capacity as President and Chief Executive Officer of BCDA and member of the Board of Directors of CDC, Respondents.**

Petitioners Mondragon Leisure and Resorts Corporation (Mondragon Leisure), Mondragon International Philippines, Incorporated (Mondragon International), and Mondragon Securities Corporation (Mondragon Securities)<sup>1</sup> filed this original action for the issuance of the writs of Prohibition and *Mandamus*, to (1) *enjoin* respondents Clark Development Corporation (CDC), Bases Conversion and Development Authority (BCDA), Rizalino S. Navarro, *CDC Chairman of the Board*, Emmanuel Y. Angeles, *CDC President and CEO*, Benigno N. Ricafort, *Chairman of the*

<sup>1</sup> Collectively referred to as petitioners.

*CDC Special Committee on MLRC Privatization*, Victor Jose I. Luciano, Chairman of the CDC Special Bids and Awards Committee, Rufo B. Colayco, BCDA President and CEO, and Members of the Board of Directors of CDC, from bidding out Mimosa Leisure Estate; and (2) compel the same respondents to refrain from excluding petitioners from the use and enjoyment of the Mimosa Leisure Estate, to return the Mimosa Leisure Estate to petitioners, and to refrain from further depriving petitioners of their constitutional right to be protected from unlawful deprivation of property without due process of law.

On February 28, 1994, respondent CDC, the implementing arm of BCDA for the Clark Special Economic Zone,<sup>2</sup> entered into a lease agreement with petitioner Mondragon Leisure for the development of a world-class recreational facility and tourist destination known as the Mimosa Leisure Estate (Estate) inside the Clark Special Economic Zone. Thereafter, petitioner Mondragon Leisure developed and operated the 232-hectare Estate, which development included the operation of the following establishments: Holiday Inn Resort Clark Field Hotel, Mimosa Regency Casino, Monte Vista Garden Resort Hotel, Mimosa Golf and Country Club, Hilltop Restaurant, and Verandah Restaurant.

Sometime in 1998, respondent CDC terminated the lease agreement in view of petitioner Mondragon Leisure's violations of the terms and conditions thereof, particularly the nonpayment by the latter of the minimum guaranteed lease rental in the amount of ₱427 million.

On December 9, 1998, petitioners sought the protection of the courts against the threatened termination of the lease agreement and takeover of the Estate by respondent CDC by filing an action for specific performance before the Regional Trial Court (RTC), Angeles City, docketed as Civil Case No. 9242. Petitioners called for the enforcement of the arbitration provision in the aforementioned lease agreement. The Executive Judge issued a 72-hour temporary restraining order (TRO) against respondent CDC. However, on December 14, 1998, respondent CDC's guards, ranking officials of Philippine Amusement Gaming Corporation (PAGCOR), and a contingent of Philippine National Police (PNP) Special Action Force tried to takeover the Estate, which resulted in the closure of the Mimosa Regency Casino. The matter eventually reached this Court *via* a petition for review docketed as G.R. Nos. 137796-97.

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<sup>2</sup> Per Executive Order No. 80, Series of 1993, entitled "*Authorizing the Establishment of the Clark Development Corporation as the Implementing Arm of the Bases Conversion and Development Authority for the Clark Special Economic Zone, and Directing All Heads of Departments, Bureaus, Offices, Agencies and Instrumentalities of Government to Support the Program.*"

In said case, this Court initially issued a TRO directing respondent CDC to refrain from terminating the lease agreement with petitioners, or taking over the Estate, including the Mimosa Regency Casino. Ultimately, however, the parties amicably settled the matter and entered into a Compromise Agreement, which this Court approved in a Resolution dated July 15, 1999. In view thereof, G.R. Nos. 137796-97 were dismissed.

Among others, the Compromise Agreement reduced rental arrears to just ₱325 million, payable in installment up to June 30, 2000, and future lease rentals by 50% of the original agreement.<sup>3</sup> To secure the ₱325 million, petitioner Mondragon Leisure would open a letter of credit in respondent CDC's favor.

Although petitioner Mondragon Leisure appeared to have complied with some of the covenants agreed upon in the Compromise Agreement, however, it failed to open a letter of credit in favor of respondent CDC because banks and prospective foreign investors were scared off by PAGCOR's cancellation of petitioner Mondragon Leisure's gaming license. Consequently, respondent CDC unilaterally cancelled the Compromise Agreement in a letter to petitioner Mondragon Leisure dated August 29, 1999. Thereafter, respondent CDC filed a motion for the issuance of a writ of execution of judgment by compromise agreement in Civil Case No. 9242 before the RTC of Angeles City, Branch 58. It sought the implementation of paragraph 7 of the Compromise Agreement, which provides that petitioner Mondragon Leisure would leave and abandon the leased premises.

Petitioners, in turn, filed a petition for declaratory relief and specific performance before the RTC, Angeles City, praying that respondent CDC be directed to comply with its obligation of allowing petitioner Mondragon Leisure to settle the ₱325 million compromise back rentals within one year. The RTC dismissed the said case on the ground of forum shopping. Said dismissal was later affirmed by this Court in G.R. No. 150986 on March 2, 2007. Note that in said case, this Court ordered herein petitioners and their counsel Ernest B. Francisco, Jr. to show cause why they should not be held in contempt for violation of the rule on forum shopping.

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<sup>3</sup> The Compromise Agreement provided for the opening of the Mimosa Regency Casino, and affirmed petitioners' right to put up additional casinos in the leased premises. It also provided that petitioner Mondragon Leisure would turn over to respondent CDC a portion of the leased property known as "Wagner High School Site." It also included that petitioner Mondragon Leisure would pay PAGCOR and the Bureau of Internal Revenue (BIR) ₱105 million.

But while the above case was still pending in court sometime in 1999, respondent CDC took over the entire Estate, forcibly evicted petitioners and its employees therefrom, and barred them from removing movable assets from the premises, including personal properties and effects. It also took over and continued the operations of petitioners' businesses.

Nonetheless, on May 29, 2001, petitioner Mondragon Leisure and respondent CDC executed an Interim Agreement to provide a provisional solution to the issues arising from the implementation of the writ of execution while looking for an investor to manage the Estate.

Thereafter, petitioner Mondragon Leisure and respondent CDC executed a Memorandum of Understanding (MOU) dated May 5, 2003 to seek a long-term solution to the on-going dispute. Under the MOU, a new corporate vehicle was to be organized and set up that will take over petitioner Mondragon Leisure's rights and interest over the Estate except for its existing liabilities and obligations. The MOU was supposed to be signed by respondent CDC, petitioner Mondragon Leisure, and the latter's secured creditors no later than June 8, 2003.

As it happened, petitioner Mondragon Leisure failed to meet the June 8, 2003 deadline, but it requested for an extension until September 8, 2003.

But petitioner Mondragon Leisure failed to comply with its commitments under the MOU within the extended period; thus, respondent CDC proceeded to privatize the Estate. In a letter dated September 9, 2003, respondent CDC informed petitioner Mondragon Leisure that under the MOU, the latter was deemed to have waived its claims over the Estate and that CDC could look for prospective investors or locators interested in taking over the Estate.

Notwithstanding the foregoing development, petitioners and respondent CDC continued their communication regarding the creation of a new memorandum of agreement and/or compromise agreement to be entered into between them.

But said negotiations appeared to have come to naught because on December 6 and 7, 2003, respondent CDC caused the publication in various newspapers of a *Request for Proposal* inviting investors to bid for the privatization of the Estate.



Respondent CDC created a Special Bids and Awards Committee (SBAC) for the privatization of the Estate on December 10, 2003.

On January 3, 2004, respondent CDC caused the publication of a *Revised Request for Proposal* reiterating its previous invitation to bid.

It was due to the foregoing development that the present petition was filed by petitioners. They anchor their petition on the allegation that respondents acted in excess of their jurisdiction and with grave abuse of discretion in<sup>4</sup>:

1. Bidding out the Estate purportedly to recover ₱500 million supposedly owed by petitioners to respondent CDC, but which amount the latter had already recovered or otherwise no longer due;
2. Excluding petitioners from their right to the use and enjoyment of the Estate on the basis of a claim which respondent CDC had already recovered or is otherwise no longer due, thereby unjustly enriching the government;
3. Including petitioners' movable assets, businesses, and goodwill in the questioned bidding, thereby violating petitioners' constitutional right to be protected against deprivation of property without due process of law;
4. Proceeding with the questioned bidding under terms and conditions which are manifestly and grossly disadvantageous to the government;
5. Proceeding with the questioned bidding under terms and conditions which give unwarranted benefits to the investor to the prejudice of petitioners and their unsecured creditors;
6. Offering investors tax and duty-free importation and national and local tax exemptions in contravention of the Court's ruling in *John Hay People's Alternative Coalition v. Victor Lim*, docketed as G.R. No. 119775;

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<sup>4</sup> *Rollo*, pp. 803-805.

7. Proceeding with the questioned bidding in violation of the provision of Republic Act 9184 or the Government Procurement Reform Act;

8. Proceeding with the questioned bidding despite the fact that there is an effective and binding interim agreement between petitioners and respondent CDC; and

9. Proceeding with the questioned bidding despite the fact that there are various cases pending before the courts on the validity of the government takeover of the Estate and the enforceability of the parties' compromise agreement which may render nugatory the questioned bidding.

In their Comment, respondents Colayco and BCDA aver that the petition contains no allegation which would entail the joining of BCDA and Colayco as party respondents, except for mentioning Colayco's actions which were done pursuant to a writ of execution and were made when he was still with CDC. They also point out that BCDA and CDC are two separate and distinct entities, having their own set of officers and board of directors, and both are independent of each other. They allege that petitioners' arguments, which constitute their cause of action, occurred without the participation of BCDA and Colayco. Thus, petitioners do not have a cause of action against respondents BCDA and Colayco.

For its part, respondents CDC and its impleaded officers argue that the Compromise Agreement entered into by the parties, filed and submitted to the Court, had become final and executory; that petitioners failed to comply with paragraphs 1 and 2 of said agreement, and they were given several opportunities to settle their obligation but to no avail; that petitioners filed several suits as dilatory tactic to forestall the final disposition of the property; that a court-approved Compromise Agreement has the force of *res judicata* as between the parties and should not be disturbed except for vices of consent or forgery; that the existence of a right violated is a prerequisite to the granting of an injunction and failure to establish it is ground for denying the injunction; that the party seeking the injunction should have sufficient title or interest to sustain it; and that the possibility of irreparable damage without proof of violation of an actually existing right is not a ground for injunction being a mere *damnum absque injuria*.

The petition is dismissed.



Going over the present petition for prohibition and *mandamus*, this Court notes that petitioners violated the principle of hierarchy of courts when they directly filed the petition before this Court; thus, this petition is dismissible outright for being procedurally infirm.

Direct resort to this Court cannot be sanctioned when the remedy sought by petitioners may equally be availed of in the RTC, which has concurrent jurisdiction with the Court of Appeals and this Court, to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus*, and injunction. It has been this Court's consistent rule that while this Court has concurrent jurisdiction with the Court of Appeals and the Regional Trial Courts (for writs enforceable within their respective regions) to issue said writs, the same does not give the petitioners the unrestricted freedom of choice of forum. Time and again litigants have been well advised against taking a direct recourse to this Court. This concurrence of jurisdiction cannot to be taken as unrestrained freedom of choice of the party seeking the writ,<sup>5</sup> as to which court the application of the writ will be directed.<sup>6</sup>

Instead, litigants should initially seek the proper relief from the lower courts. As a court of last resort, this Court should not be burdened with the task of dealing with causes in the first instance. This Court's original jurisdiction to issue extraordinary writs should be exercised only where absolutely necessary, or where serious and important reasons therefore exist;<sup>7</sup> that is, only where there are special and compelling reasons specifically alleged in the petition to justify such action.<sup>8</sup>

In *People v. Cuaresma*,<sup>9</sup> the Court held:

This Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction) is not exclusive. It is shared by this Court with Regional Trial Courts (formerly Courts of First Instance) which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals (formerly Intermediate Appellate Court), although prior to the effectivity of Batas Pambansa Bilang 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." This concurrence of jurisdiction is not, however,

<sup>5</sup> *Tolentino v. People*, 532 Phil. 429, 433 (2006).

<sup>6</sup> *Paradero v. Abragan*, 468 Phil. 277, 288 (2004).

<sup>7</sup> *Pearson v. Intermediate Appellate Court*, 356 Phil. 341, 355 (1998).

<sup>8</sup> *Quesada v. Department of Justice*, 532 Phil. 159, 164 (2006); *Commissioner of Internal Revenue v. Leal*, 440 Phil. 477, 484-485 (2002).

<sup>9</sup> 254 Phil. 418, 426-427 (1989).



to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is [an] established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. x x x. (Citations omitted.)

By directly filing this Rule 65 petition before this Court, petitioners in this case have unduly taxed the Court's time and attention which are better devoted to matters within the Court's exclusive jurisdiction. Worse, petitioners only contributed to the overcrowding of the Court's docket.

Petitioners have failed to make a showing that the redress desired cannot be obtained in the RTC; and that they are exempt from complying with the principle of hierarchy of courts. They justify their invocation of the Court's jurisdiction by simply claiming that under Section 3 of Republic Act No. 8975, entitled "An Act to Ensure the Expedious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and For Other Purposes," only the Court "may issue a temporary restraining order against the national government to restrain or prohibit the bidding or awarding of contract by the national government (which by definition includes government-owned and -controlled corporations)."

This is misleading.

Section 3 of Republic Act No. 8975 reads:

**Section 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.** – No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under

the government's direction, to restrain, prohibit or compel the following acts:

- (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
- (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
- (c) Commencement, prosecution, execution, implementation, operation of any such contract or project;
- (d) Termination or rescission of any such contract/project;  
and
- (e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

The aforequoted provision will readily show that the law does not proscribe the issuance of a permanent injunction granted by a court of law arising from an adjudication of a complaint for injunction based on its merits.<sup>10</sup> In other words, the law does not preclude the lower courts from assuming jurisdiction over complaints or petitions for injunction that seek as the ultimate relief the permanent enjoinder and/or nullification of the implementation of a national infrastructure project.

Therefore, assuming the operation of the Estate falls under the nature of a "national government project" per Section 2 of the law, viz:

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<sup>10</sup> *The Bases Conversion and Development Authority v. Uy*, 537 Phil. 18, 33 (2006).

**Section 2. Definition of Terms. –**

(a) “National government projects” shall refer to all current and future national government infrastructure, engineering works and service contracts, including projects undertaken by government-owned and – controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding.

(b) “Service contracts” shall refer to infrastructure contracts entered into by any department, office or agency of the national government with private entities and nongovernment organizations for services related or incidental to the functions and operations of the department, office or agency concerned.

the prayer of petitioners to permanently enjoin respondents from bidding out the operation of the Estate is not barred by Republic Act No. 8975.

And as to the issuance of a temporary restraining order or preliminary injunction relative to “national government projects,” the second paragraph, Section 3, of the same provision of law provides:

**This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.** The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought. (Emphasis supplied.)

The lower court may issue a temporary restraining order or preliminary injunction if the matter is of extreme urgency involving a constitutional issue, such that unless it is issued, grave and irreparable injury will arise.

Thus, from the foregoing discussion, petitioners’ invocation of Republic Act No. 8975 to excuse the observance of the principle of the hierarchy of courts is misplaced.

Petitioners have neither shown that they are entitled to the preliminary relief prayed for from this Court, nor have they satisfactorily justified their direct invocation of the Court’s jurisdiction. Clearly, a direct

invocation of this Court's original jurisdiction may only be allowed if there are special and important reasons clearly and specifically set out in the petition which, however, is not obtaining in this case.<sup>11</sup>

Moreover, this Court points out that the issues raised in the present petition involve questions of facts, which the lower courts are in a better position to resolve instead of this Court since we are not a trier of facts and do not normally undertake an examination of the contending parties' evidence.<sup>12</sup>

In any case, the petitioners wrongly availed themselves of a petition for prohibition and *mandamus*.

Petitioners seek to stop respondents' actions and proceedings on the on-going bidding of the Estate, and to nullify all actions and proceedings already taken in connection therewith. The latter objective is clearly improper because nullification of an act is not the purpose of a writ of prohibition. The purpose of a writ of prohibition is to prevent the performance of an act that may injure or cause damage to the complaining party, or violate the latter's right.

Under Rule 65, Section 2 of the 1997 Rules of Civil Procedure, prohibition is a relief "when the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law."

The duty is discretionary if the law imposes a duty upon a public officer and gives him the right to decide when the duty shall be performed. In contrast, a ministerial duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. And both judicial and quasi-judicial functions involve the determination of what the law is, and what the legal rights of the contending parties are, with respect to the matter in controversy and, on the basis thereof and the facts obtaining, the adjudication of their respective rights.<sup>13</sup>

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<sup>11</sup> *Candelaria v. Regional Trial Court, Branch 42, City of San Fernando, Pampanga*, G.R. No. 173861, July 14, 2014.

<sup>12</sup> *Kalipunan ng Damayang Mahihirap, Inc. v. Robredo*, G.R. No. 200903, July 22, 2014.

<sup>13</sup> *Id.*

In this case, respondent CDC intends to bid out the Estate and privatize it so as not to prejudice the interest of the government. The act of bidding out is neither judicial nor quasi-judicial in nature since it does not involve an adjudication of rights and application of law on a given set of facts. It is also not ministerial in nature because no law mandates or forbids its implementation. It is, however, discretionary in nature, because it entails the use of judgment as to whether the bidding should be done, and if so, who, what, when, where, why or how it should be done. Section 2 of Rule 65 does not cover discretionary acts, and therefore, the act complained of is beyond the scope of a writ of prohibition.

On the other hand, Section 3 of the same Rule declares that *mandamus* is a remedy “when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.” It is aimed to compel a respondent, who failed to execute his/her legal duty, or unlawfully excluded another from the enjoyment of an entitled right or office, to perform the act needed to be done in order to protect the rights of the petitioner. Simply put, “*mandamus* is employed to compel the performance, when refused, of a ministerial, as opposed to a discretionary, duty.”<sup>14</sup>

In *Tay v. Court of Appeals*,<sup>15</sup> this Court elucidated on when a writ of *mandamus* may issue, to wit:

In order that a writ of *mandamus* may issue, it is essential that the person petitioning for the same has a clear legal right to the thing demanded and that it is the imperative duty of the respondent to perform the act required. It neither confers powers nor imposes duties and is never issued in doubtful cases. It is simply a command to exercise a power already possessed and to perform a duty already imposed.

In the case at hand, the petition for *mandamus* aims to direct respondents to refrain from excluding petitioners from the use and enjoyment of the Estate, to return the same to the petitioners, and to refrain from further depriving petitioners of their constitutional right to be

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<sup>14</sup> *Cachopero v. Celestial*, G.R. No. 146754, March 21, 2012, 668 SCRA 619, 630.  
<sup>15</sup> 355 Phil. 381, 397 (1998).

protected from unlawful deprivation of property without due process of law.

But it appears that the petitioners lost possession and control of the Estate due to its failure to meet its contractual obligations under the several agreements it entered into with respondent CDC. Specifically, petitioner Mondragon Leisure failed to pay the rent, which violated several provisions of the different agreements: (a) Article XII, Section 2 of the Lease Agreement states that “the LESSOR shall be entitled to exercise all its rights and avail of all its remedies in case of default;”<sup>16</sup> thus, respondent CDC exercised its right under Section 3, Paragraph A of the same article of the Lease Agreement, which provides that “[i]n case of termination by [the] LESSOR, [the] LESSOR shall have the right to take over the Leased Property effective as of termination date;”<sup>17</sup> (b) further, Paragraph 7 of the Compromise Agreement states that “[t]he parties agree that upon the failure of MLRC to pay any monthly rental x x x or upon MLRC’s failure to comply with any of its obligations under this Compromise Agreement, x x x CDC shall have the right to cancel and terminate this Compromise Agreement upon which MLRC shall leave, abandon any and all premises leased to MLRC by CDC;”<sup>18</sup> and (c) Article XI of the MOU provides that “MLRC x x x hereby agrees that failure on its part to comply fully with the Memorandum of Understanding x x x shall be a conclusive ground for its withdrawal of its claims and interest over the Resort Complex, including waiver of any action against CDC and shall voluntarily leave the premises of the Resort Complex without need of judicial action.”<sup>19</sup>

That the petitioners were unable to meet its contractual obligations seems to be the case; hence, it is doubtful if they can claim a legal right to retain or to be restored in possession of the Estate. Consequently, respondents cannot be compelled to give back possession of the Estate to petitioners for such act is discretionary in nature, and again, not covered by a writ of *mandamus*. Therefore, the Court cannot order the issuance of a writ of *mandamus* for clear absence of basis in law.

Further, Rule 65, Sections 2 and 3 also state that prohibition and *mandamus* are remedies when the act complained of was committed or withheld without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

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<sup>16</sup> *Rollo*, p. 128.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 149.

<sup>19</sup> *Id.* at 198.

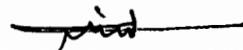
Grave abuse of discretion has been defined as the arbitrary exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be condemned as having been done with grave abuse of discretion, such an abuse must be patent and gross.<sup>20</sup> However, the petitioners were not able to establish their allegations of grave abuse of discretion on the part of the respondents.

On the foregoing premises and conclusions, this Court finds it unnecessary to discuss the other issues raised by petitioners.

**WHEREFORE**, premises considered, the petition for prohibition and *mandamus* is **DISMISSED**. Costs against petitioners.

**SO ORDERED.**

Very truly yours,

  
**EDGAR O. ARICHETA**

Division Clerk of Court <sup>M 4114</sup>  
**256**

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<sup>20</sup>

*Hayudini v. Commission on Elections*, G.R. No. 207900, April 22, 2014.