



Republic of the Philippines
Supreme Court
 Manila

Lupel Luyten
 Division Court
 Third Division
 FEB 15 2017

THIRD DIVISION

**POWER SECTOR ASSETS AND
 LIABILITIES MANAGEMENT
 CORPORATION (PSALM),**
 Petitioner,

G.R. No. 194226

Present:

- versus -

VELASCO, JR., *J.*, *Chairperson*,
 BERSAMIN,
 REYES,
 JARDELEZA, and
 CAGUIOA, * *JJ.*

**COURT OF APPEALS (21st
 Division), and FRANCISCO
 LABAO, as General Manager of
 SAN MIGUEL PROTECTIVE
 SECURITY AGENCY (SMPSA),**
 Respondents.

Promulgated:

February 15, 2017

X-----*Lupel Luyten*-----X

DECISION

BERSAMIN, J.:

At issue is whether a non-party to a suit may be subjected to the injunctive writ issued against one of the parties.

The Case

By petition for *certiorari*, Power Sector Assets and Liabilities Management Corporation (PSALM) seeks that judgment be rendered: (a) issuing a writ of preliminary mandatory injunction to allow it to post security guards to secure the premises and property of the National Power Corporation Mindanao-Generation Headquarters (NPC MinGen); (b) annulling the resolutions promulgated by the Court of Appeals (CA) on June 9, 2010¹ and August 18, 2010² and in CA-G.R. SP No. 03219-MIN; (c) dissolving the writ of preliminary injunction issued by the CA insofar as the

* Designated as additional Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

¹ *Rollo*, pp. 52-53, penned by Associate Justice Romulo V. Borja, with Associate Justice Edgardo T. Lloren and Associate Justice Ramon Paul L. Hernando concurring.

² *Id.* at 55-56; penned by Associate Justice Borja, with Associate Justice Lloren and Associate Justice Hernando concurring.

writ affected its (PSALM) rights and interest; and (d) issuing a permanent injunction to prevent respondent Francisco Labao (Labao) from proceeding against it (PSALM).³

Antecedents

National Power Corporation (NPC) set a public bidding for the security package in NPC MinGen. Among the participating bidders was San Miguel Protective Security Agency (SMPSA), represented by Labao. However, NPC's Bids and Awards Committee (BAC) disqualified SMPSA for its alleged failure to meet the equipage requirements. The disqualification prompted Labao, as the general manager of SMPSA, to bring a petition for *certiorari* against NPC and its officials in the Regional Trial Court (RTC) in Lanao del Norte.

On January 30, 2009, the RTC issued a temporary restraining order (TRO) directing NPC and its officials to desist from awarding the security package, as well as from declaring a failure of bidding. On February 17, 2009, the RTC issued the writ of preliminary injunction enjoining NPC and its officials from committing said acts.

On August 17, 2009, the RTC, ruling in favor of SMPSA, made the injunction permanent, and granted other reliefs to SMPSA, to wit:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered in favor of the petitioner and against the respondent as follows:

1. Declaring the injunction permanent against the respondent by:
 - a) Setting aside the ruling disqualifying petitioner and to issue an amended ruling that petitioner had passed in the technical proposal;
 - b) Ordering the respondent to stop the direct payment scheme it imposed;
2. Ordering the BAC to open the BID of petitioner in order to determine the lowest bidder;
3. Ordering the member of the BAC to pay the petitioner;
 - a) the sum of ₱250,000.00 as moral damages;

³ Id. at 41.

b) the sum of ₱100,000.00 as attorney's fees and to pay the cost of suit.

SO ORDERED.⁴

In due course, NPC appealed to the CA.

In the meantime, on March 9, 2009, NPC and PSALM entered into an operation and maintenance agreement (OMA) whereby the latter, as the owner of all assets of NPC by virtue of Republic Act No. 9136, otherwise known as the *Electric Power Industry Reform Act of 2001* (EPIRA), had the obligation to provide for the security of all the plants, assets and other facilities. Accordingly, on March 29, 2009, PSALM conducted a public bidding of its own for the security package of various power plants and facilities in Mindanao, including those of NPC MinGen. During the public bidding, Tiger Investigation, Detective & Security Agency (TISDA) was declared the winning bidder for the package corresponding to NPC MinGen.

On April 7, 2010, PSALM received the TRO issued by the CA on April 5, 2010. It is noted, however, that Labao did not furnish PSALM a copy of SMPSA's *Urgent Motion for the Issuance of a TRO and/or Preliminary Prohibitory Injunction*.

Notwithstanding the fact that PSALM was not a party in the case brought by Labao against NPC, and the fact that PSALM was not furnished a copy of Labao's *Urgent Motion for the Issuance of a TRO and/or Preliminary Prohibitory Injunction*, the CA issued the assailed resolution granting the TRO in order to maintain the *status quo*, and expressly included PSALM as subject of the writ.

Hence, PSALM has come to the Court by petition for *certiorari*, insisting that the CA thereby acted without or in excess of jurisdiction, or gravely abused its discretion amounting to lack or excess of jurisdiction.

Issues

PSALM submits the following as issues, namely:

- 1.) Whether or not the CA acted without or in excess of jurisdiction or with grave abuse of discretion in issuing a writ of preliminary injunction enjoining the petitioner from offering or bidding out or

⁴ Id. at 630-A - 631.

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accepting bid proposals for the procurement of security services for the MinGen Headquarters despite the fact that private respondent Labao is not entitled to the injunctive relief; and

- 2.) Whether or not the CA acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in holding petitioner bound by the decision of the lower court although petitioner was not a party to the case between private respondents NPC and Labao.⁵

Ruling of the Court

The petition for *certiorari* is granted.

Considering that PSALM had not been impleaded as a party in the proceedings in the RTC, Labao tried to include PSALM by praying that “National Power Corporation, its agents, successors or assigns such as Power Sector Assets and Liabilities Management Corp. (PSALM)” be enjoined as well. In the assailed resolution promulgated on June 9, 2010 granting Labao’s application for the writ of preliminary injunction, the CA, without elucidating how it found merit in the application of Labao,⁶ tersely stated:

After a judicious evaluation of their respective memoranda, this Court finds merit in the prayer for a Writ of Preliminary Injunction. In order to Maintain the *status quo*, the prayer for the issuance of a Writ of Preliminary Injunction is hereby GRANTED.⁷

The rationale of the ruling can be gleaned from the CA’s resolution promulgated on April 5, 2010 granting the TRO,⁸ as well as the resolution promulgated on May 18, 2010 denying the motion for reconsideration filed by PSALM.⁹ Therein, the CA observed that the judgment of the RTC granting the prayer for injunction was enforceable against NPC as well as against its agents, representatives and whoever acted in its behalf, including PSALM which had clearly acted on behalf of NPC;¹⁰ that PSALM was not merely an agent but an assignee of the NPC;¹¹ that PSALM, in its capacity as owner, was already a real party in interest when the case was instituted in the RTC;¹² and that it was erroneous for PSALM to claim that it was not a party

⁵ Id. at 14.

⁶ Supra note 1.

⁷ *Rollo*, p. 53.

⁸ Id. at 193-196.

⁹ Id. at 226-229.

¹⁰ Id. at 195.

¹¹ Id. at 228.

¹² Id.

in the proceedings below because the continuance of the action against PSALM's predecessor-in-interest was sanctioned by the *Rules of Court*.¹³

In its resolution promulgated on May 18, 2010 denying PSALM's motion for reconsideration,¹⁴ the CA opined that PSALM was a real party in interest as defined under Section 2, Rule 3 of *the Rules of Court* because PSALM stood to benefit from or be injured by the judgment in the case.¹⁵

We cannot uphold the resolutions of the CA.

First of all, Section 49 of Republic Act No. 9136,¹⁶ or EPIRA, *expressly created* PSALM as a corporate entity separate and distinct from NPC, to wit:

Section 49. Creation of Power Sector Assets and Liabilities Management Corporation. – There is hereby created a government owned and controlled corporation to be known as the “Power Sector Assets and Liabilities Management Corporation”, hereinafter referred to as the “PSALM Corp.”, which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the National Power Corporation arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within ninety (90) days from the approval of this Act.

Accordingly, the CA blatantly erred in holding that PSALM, without being made a party itself, was subject of the writ of injunction issued against NPC. PSALM and NPC, despite being unquestionably invested by law with *distinct* and *separate* personalities, were intolerably confused with each other.

Secondly, Labao was quite aware that under EPIRA, PSALM became the owner as early as in mid-2001 of *all* of NPC's existing generation assets, liabilities, IPP contracts, real estate and all other disposable assets, as well as all facilities of NPC. NPC-MinGen was among the assets or properties coming under the ownership of PSALM. As such owner, PSALM was an indispensable party without whom no final determination could be had if it was not joined.¹⁷ An indispensable party is one who has such an interest in the controversy or subject matter that a final adjudication

¹³ Id.

¹⁴ Supra note 9.

¹⁵ *Rollo*, p. 38.

¹⁶ Approved on June 8, 2001.

¹⁷ See Section 7, Rule 2 of the *Rules of Court*.

cannot be made in its absence without injuring or affecting that interest.¹⁸ As such, Labao should have impleaded PSALM in the proceedings in the RTC, or the RTC should have itself seen to PSALM's inclusion as an indispensable party.

Thirdly, the CA, in issuing the TRO, relevantly declared in the resolution promulgated on April 5, 2010,¹⁹ viz.:

x x x x

The injunction granted by the lower court in the above-quoted Decision is not stayed by appeal but is immediately executory. Upon its rendition, the judgment granting injunction is enforceable against appellants as well as their agents, representatives and whosoever acts in their behalf **including the Power Sector Assets and Liabilities Management Corporation (PSALM) which is clearly acting on behalf of appellants.** Thus, to reinforce and fortify the injunctive judgment of the lower court and to foreclose any attempt to circumvent the reach of the injunctive judgment, this Court resolves to grant the motion for a temporary restraining order.

WHEREFORE, let a Temporary Restraining Order (TRO) issue ordering appellants, their agents, representatives or other entities acting for them and in their behalf, **including the PSALM**, to cease and desist from offering or bidding out or accepting bid proposals for the procurement of security services for the MINGEN Head Quarters (NPC MRC Complex) from interested bidders.

In order to determine the necessity of issuing a Writ of Preliminary Injunction, let a hearing be called on May 5, 2010, at 10:00 o'clock in the morning, at the Hearing Room of the Court of Appeals – Mindanao Station, YMCA Building, Julio Pacana St., Cagayan de Oro City.

SO ORDERED.

The CA thereby committed a manifest error.

NPC and PSALM had entered into the OMA on March 9, 2009, whereby the latter, as the owner of all the assets of NPC pursuant to EPIRA, assumed the obligation to provide for the security of all the plants, assets and other facilities. By virtue of PSALM and NPC being separate and distinct entities operating the assets and facilities, the OMA was crafted to avoid confusion between them by delineating their respective functions in the making of management decisions. The OMA further ensured that PSALM

¹⁸ *Regner v. Logarta*, G.R. No. 168747, October 19, 2007, 537 SCRA 277, 291, citing *Arcelona v. Court of Appeals*, G.R. No. 102900, October 2, 1997, 280 SCRA 20, 38.

¹⁹ *Rollo*, pp. 193-196.

and NPC co-existed in the management of the assets and facilities and were on the same page as to day-to-day operations. It was PSALM's responsibility as the owner under Part VII of the OMA to provide for the security of all plants, other assets, and other facilities, including NPC's personnel working in the owner's premises.²⁰ On March 29, 2009, therefore, PSALM conducted its own public bidding for the security package of various power plants and facilities in Mindanao, including those of NPC MinGen. In that public bidding, TISDA was the winning bidder for the package corresponding to NPC MinGen. In so conducting its own public bidding, PSALM was not acting as the agent of NPC, but in its own interest as the owner. According to the *Civil Code*, indeed, an agent is a "person who binds himself to render some service or to do something in representation or on behalf on another, with the consent or authority of the latter."²¹

We also emphasize that the transfer of NPC's assets and liabilities pursuant to EPIRA had become effective as of June 26, 2001; and that the security contract between NPC and SMPSA had run from September 1, 2004 to September 1, 2006. Considering that SMPSA's action was commenced only on January 26, 2009, PSALM was not a transferee *pendent elite* or successor-in-interest of the parties by title *subsequent to* the commencement of the action within the context of Section 19,²² Rule 3 of the *Rules of Court*. In other words, no order or judgment rendered in the action between SMPSA and NPC could bind PSALM.

It is further worth pointing out that the security contract between NPC and SMPSA, which was entered into in 2004 for a duration from September 1, 2004 to September 1, 2006, did not relate to or include PSALM. Hence, whatever rights and obligations arising from said contract between NPC and SMPSA did not affect PSALM under the basic principle of relativity of contracts by which contracts take effect only between the parties, their assigns and heirs.²³ Accordingly, in the absence of privity of contract between SMPSA and PSALM, the latter had no obligation towards or liability in favor of the former to speak about.²⁴ Specifically, PSALM, for lack of privity, came under no legal obligation to continue the security contract entered into between NPC and SMPSA.

Moreover, the security contract of SMPSA with NPC, having already expired, was being renewed on a monthly basis since its expiration. There

²⁰ Id. at 92.

²¹ Article 1868, *Civil Code*.

²² Section 19. Transfer of interest. — In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

²³ See Article 1311, *Civil Code*.

²⁴ *Borromeo v. Court of Appeals*, G.R. No. 169846, March 28, 2008, 550 SCRA 269, 282.

was no longer any existing or current legal tie binding NPC and SMPSA together. Consequently, the theory of the CA that PSALM could be covered by the TRO and the writ of injunction as an agent of NPC had no factual and legal bases.

And, lastly, Labao's pleading in the RTC claimed that SMPSA was entitled to the issuance of a writ of preliminary injunction on the ground that depriving them of the opportunity to bid for the contract was prejudicial, and that SMPSA would lose legitimate income should the award of the contract and/or declaration of failure of bidding not be restrained.²⁵ But it was clear that even if SMPSA had not been disqualified by the BAC, there was no guarantee that it would emerge as the lowest bidder in the public bidding. This highlighted the reality that because the interest that SMPSA sought to protect by the suit for injunction hinged on the favorable result of the public bidding, the supposed income to be earned by SMPSA was but a mere expectancy premised on the remote possibility of the security contract being ultimately awarded to SMPSA. In other words, the suit was based on the assumption that SMPSA would win the bid if it would not be disqualified, which, at best, was highly speculative. Hence, the right of SMPSA to be protected by injunction, because it might not arise at all, was not *in esse*.²⁶

In fine, the CA unquestionably exceeded its jurisdiction in including PSALM within the coverage of the TRO and the writ of injunction issued against NPC. There is no question that as a provisional remedy to prevent irreparable injury pending the final determination of the action, injunction can bind only the parties in the action, or their privies or successors-in-interest. No person who has not been impleaded and duly served with the summons should be adversely affected by the outcome of the action.²⁷ The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which it has not been made a party conforms to the constitutional guarantee of due process of law.²⁸ *Certiorari* lies.

WHEREFORE, the Court **GRANTS** the petition for *certiorari*; **MODIFIES** the resolution promulgated on June 9, 2010 issued in CA-G.R. SP No. 03219-MIN by excluding petitioner Power Sector Assets and Liabilities Management Corporation from the coverage and legal effects of the Writ of Preliminary Injunction; **ANNULS** and **SETS ASIDE** the resolution promulgated on August 18, 2010 in CA-G.R. SP No. 03219-MIN denying Power Sector Assets and Liabilities Management Corporation's

²⁵ *Rollo*, p. 111.

²⁶ *Osmeña III v. Abaya*, G.R. Nos. 211737 & 214756, January 13, 2016.

²⁷ *Dare Adventure Farm Corporation v. Court of Appeals*, G.R. No. 161122, September 24, 2012, 681 SCRA 580; citing *Filamer Christian Institute v. Court of Appeals*, G.R. No. 75112, October 16, 1990, 190 SCRA 485, 492.

²⁸ *Id.* at 588.


motion for reconsideration; and **EXCLUDES** Power Sector Assets and Liabilities Management Corporation from the scope of the Writ of Preliminary Injunction issued in CA-G.R. SP No. 03219-MIN.

Respondent Francisco Labao is **ORDERED** to pay the costs of suit.

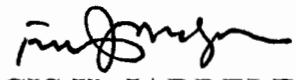
SO ORDERED.

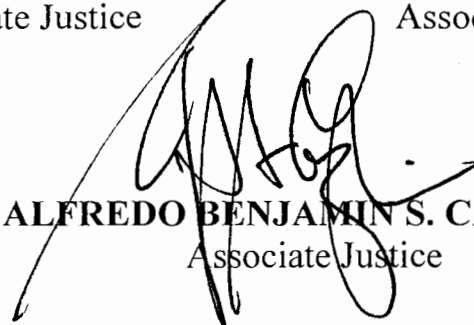

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

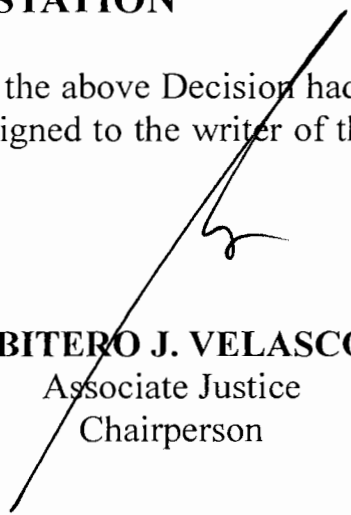

BIENVENIDO L. REYES
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
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.

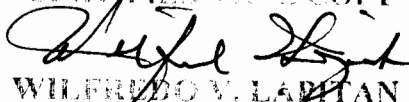

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAR 10 2017