

nature as they were in the form of expressly stated conditions imposed on the release of the petitioner.

The sheer lack of cases illustrative of the *Villavicencio* and *Caunca* standards, coupled with the restrictive language of the Rules of Court on the availability of the writ of *habeas corpus* that seems to refer only to "illegal confinement or detention,"⁵³ has misled students of the law into believing that, in order to be entitled to a writ of *habeas corpus*, the petitioner or person in whose behalf the remedy is sought must be actually confined or detained.

The question this article poses is this: how many situations of unlawful restraint on liberty of the kind redressed in *Villavicencio* and *Caunca* have not been brought before the courts (and probably continue to date) because the victims' otherwise meritorious petitions for *habeas corpus* have been preempted by the restrictive language of the Rules of Court?

The author's recommendation is simple. Consistent with *Villavicencio* and *Caunca*, and even *Moncupa*, the Rules of Court formulation on the availability of the writ of *habeas corpus* should be amended to expressly state that it extends to "all cases of unlawful restraint on liberty, whether physical or psychological in nature, which precludes freedom of action." After all, the vindication of basic liberties through the application of the government of laws and not of men principle cannot remain hidden in the recesses of *habeas corpus* cases that reach the Supreme Court.

Examining the Writ of Preliminary Injunction

Judge Oscar B. Pimentel*

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I. INTRODUCTION

The Philippine courts, as illustrated in most of the Philippine cases, are generally known to be *courts of law*,¹ and not *courts of equity*.² However, this does not prevent the courts from resorting to equitable remedies. The object of an equitable remedy is to make the administration of justice more complete, by affording relief where courts of law are incompetent to give it,

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1. BLACK'S LAW DICTIONARY 358 (6d ed. 1990). ([I]n a broad sense, a court of law means any "duly constituted tribunal administering the laws of the state or nation;" in a narrower sense, a "court proceeding according to the course of the common law and governed by its rules and principles.").
2. *Id.* at 356. ([A] court of equity is a court "which administers justice and decided controversies in accordance with the rules, principles, and precedents of equity, and which follows the forms and procedure of chancery.").

or to give it with effect.³ Courts resort to this kind of relief to promote the spirit and habit of fairness and justness, such as when they are of the opinion that a payment of damages only is not sufficient for a fair or just settlement of the case.⁴ One such equitable remedy in the form of a court order enforced by the Philippine courts is an injunction.⁵

An injunction is a writ framed according to the circumstances of the case "commanding an act which the court regards as essential to justice, or restraining an act it deems contrary to equity and good conscience."⁶ It is an order of a court requiring a person, corporation, or government entity to stop doing something and "to refrain from doing a particular act."⁷ In relatively rare cases, the court may issue a mandatory injunction, compelling a person, company, or governmental unit to "perform a particular act."⁸ An injunction may be an action in itself, brought specifically to restrain or command the performance of an act,⁹ or it may just be a provisional remedy for and as an incident in the main action which may be availed of by the parties in order to preserve or protect their rights during the pendency of the principal action.¹⁰

An injunction may be preliminary or final. A preliminary injunction is "an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency, or a person to refrain from a particular act or acts."¹¹ A final injunction is one issued in a judgment of a case "perpetually restraining the party or person enjoined from the commission or continuance of the act or acts or confirming the preliminary mandatory injunction,"¹² thus, making the preliminary injunction permanent.

An injunction may also be preventive or mandatory. A preventive injunction requires a person to "refrain from doing a particular act,"¹³ while

3. *Id.* at 540.

4. *Id.*

5. *Manila Banking Corporation v. Court of Appeals*, 187 SCRA 138, 144 (1990).

6. *Rosauro v. Cuneta*, 151 SCRA 570, 574 (1987).

7. 1997 RULES OF CIVIL PROCEDURE, rule 58, § 1.

8. *Id.*

9. *See, An Act to Ordain and Institute The Civil Code of the Philippines* [NEW CIVIL CODE], Republic Act No. 386, art. 26 (1950); 1997 RULES OF CIVIL PROCEDURE, rule 39, § 4; *Manila Banking Corporation v. Court of Appeals*, 187 SCRA 138, 144-45 (1990).

10. *Cootauco v. Court of Appeals*, 162 SCRA 122, 127 (1988).

11. 1997 RULES OF CIVIL PROCEDURE, rule 58, § 1.

12. *Id.* § 9.

13. *Mabayo Farms, Inc. v. Court of Appeals*, 386 SCRA 110, 115 (2002).

a mandatory injunction requires the "performance of a particular act."¹⁴ A mandatory injunction will only be granted upon a showing that: (a) the invasion of the right is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damages.¹⁵

This Article focuses on the nature, purpose, and grant of preliminary injunction together with the issuance of a temporary restraining order. The Rules of Court ("Rules") as well as several cases are discussed to illustrate important points pertaining to the issuance of a preliminary injunction.

II. NATURE AND PURPOSE

A preliminary injunction is a temporary order made by a court at the request of one party that precludes the other party from doing a particular act until the conclusion of a trial on the merits.¹⁶ As an ancillary or preventive remedy, a writ of preliminary injunction may be resorted to by a party to protect or preserve his rights during the pendency of the principal action.¹⁷ Its object, therefore, is to "preserve the status quo until the merits of the case can be heard."¹⁸

A preliminary injunction is not a cause of action in itself but merely a provisional remedy, an "adjunct to a main suit."¹⁹ This concept is illustrated in *Mabayo Farms, Inc. v. Court of Appeals*²⁰ wherein the sole issue tackled was whether or not private respondent is "bound by the writ of preliminary injunction issued by the trial court."²¹ In this case, the "trial court issued a writ of preliminary injunction restraining the defendants or persons acting on their behalf from entering and cultivating the disputed property."²² Such writ was also served upon the private respondent, who was occupying a portion of the disputed property but who was not a party to the original case. Thus, private respondent filed a petition for *certiorari* with the Court of Appeals, contending that he only learned about the writ of preliminary injunction when he secured a copy of the order.²³ He claimed that the injunction prevented him from using his property and that it was in "grave

14. 1997 RULES OF CIVIL PROCEDURE, rule 58, § 1.

15. *Bautista and Magbuhat v. Barcelona, et al.*, 100 Phil. 1078, 1081 (1957).

16. *Mabayo Farms, Inc.*, 386 SCRA at 115 (2002).

17. *Id.*

18. *Id.*

19. *Id.* (citing *Lopez v. Court of Appeals*, 322 SCRA 686, 691 (2000)).

20. *Mabayo Farms, Inc. v. Court of Appeals*, 386 SCRA 110, 115 (2002).

21. *Id.* at 113.

22. *Id.* at 114.

23. *Id.*

abuse of discretion for the trial court to enforce the injunctive writ against him since it did not have jurisdiction over him."²⁴ The Court ruled that a person who is not a party in the main suit, like private respondent, "cannot be bound by an ancillary writ, such as the writ of preliminary injunction issued against the defendants."²⁵ "He cannot be affected by any proceeding to which he is a stranger."²⁶ The Court further said that in order to make the injunctive writ applicable against private respondent, petitioner should have impleaded respondent as an additional defendant in the instant case.²⁷

It is also a well-entrenched rule that consummated acts can no longer be restrained by injunction whose sole objective is to preserve the status quo until the merits of the case are fully heard.²⁸ Status quo is defined as the "last actual, peaceful, uncontested situation that precedes a controversy, and its preservation is the office of an injunctive writ."²⁹ This shows that an injunction contemplates acts being committed or about to be committed. Hence, an injunction does not lie against acts already committed.³⁰

Even if the acts complained of have already been committed, but such acts are continuing in nature and were in derogation of plaintiff's rights at the outset, preliminary mandatory injunction may be availed of to restore the parties to the status quo.³¹ This was shown in *Manila Electric Company v. Soncor Philippines Corporation*,³² wherein respondent Soncor Philippines Corporation instituted a suit against Manila Electric Company for damages with prayer for the issuance of a writ of preliminary mandatory injunction, contending that Manila Electric Company "unilaterally, capriciously, and abruptly invaded its right to a continued supply of electric power when it disconnected its supply on an unjustified ground of alleged meter tampering."³³ The trial court granted the prayer of respondent which Manila Electric Company opposed, contending that the respondent judge committed grave abuse of discretion amounting to lack or excess of

24. *Id.* at 113.

25. *Id.*

26. *Mabayo Farms, Inc. v. Court of Appeals*, 386 SCRA 110, 115 (2002) (citing *Matuguina Integrated Wood Products, Inc. v. Court of Appeals*, 263 SCRA 490, 505-06 (1996)).

27. *Mabayo Farms, Inc.*, 386 SCRA at 115 (2002).

28. *Los Baños Rural Bank, Inc. v. Africa*, 354 SCRA 535, 546 (2002).

29. *Id.* at 547.

30. *Romulo v. Yñiguez*, 141 SCRA 263, 279 (1986).

31. *Dayrit v. De los Santos*, 18 Phil. 275, 280 (1911).

32. *Manila Electric Company v. Alejo*, CA-G.R. SP No. 56945 (Court of Appeals, 9th Division, July 12, 2005) (decision denying petition for certiorari which assails the issuance of the writ of preliminary injunction).

33. *Id.* at 3.

jurisdiction in issuing the writ of preliminary injunction when private respondent had not shown any clear right to be entitled to the issuance of a preliminary mandatory injunction.³⁴ The Court of Appeals held that respondent judge was justified in granting the writ of preliminary mandatory injunction.³⁵ To restore the parties to the status quo, an electric company can be compelled to provisionally reconnect the service it had disconnected and which act is assailed in the main action.

It has also been ruled in *M.E.R. & L. Co. v. Del Rosario and Jose*³⁶ that:

[I]t is generally improper to issue mandatory injunction prior to the final hearing; nevertheless in cases of extreme emergency; where the right is very clear; where considerations of relative inconvenience bear strongly in favor of complainant; where there appears to be a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties recently and arbitrarily interrupted by the defendant, than to establish a new relation, the jurisdiction to grant preliminary mandatory injunction undoubtedly exists.³⁷

Based from the cases discussed, it is shown that in taking cognizance of a prayer for a writ of preliminary injunction, a court has the duty to determine whether the following requisites for the grant of injunction are present in the case: (1) the existence of a clear and unmistakable right that must be protected and (2) an urgent and paramount necessity for the writ to prevent serious damage.³⁸ With regard to such requisites, *Garcia v. Burgos*³⁹ held that:

[T]here is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.⁴⁰

In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.⁴¹ This is exemplified in *Olalia v.*

34. *Id.* at 4.

35. *Id.* at 6.

36. *M.E.R. & L. Co. v. Del Rosario and Jose*, 22 Phil. 433 (1912).

37. *Id.* at 437.

38. *Civil Service Commission v. Court of Appeals*, 475 SCRA 276, 287 (2005) (citing *Manila International Airport Authority v. Court of Appeals*, 397 SCRA 348, 359 (2003)).

39. *Garcia v. Burgos*, 291 SCRA 546 (1998).

40. *Id.* at 583 (citing *Olalia v. Hizon*, 196 SCRA 665, 672 (1991)).

41. *Olalia v. Hizon*, 196 SCRA 665, 672 (1991).

Hizon,⁴² where private respondent Lolita Hizon filed a complaint for unfair competition with damages and prayer for preliminary injunction against her brother's wife, petitioner Leonor Olalia, claiming that she had been "using the business name Pampanga's Best since 1974 and that her goodwill had been impaired because of the petitioner's use of the name Pampanga's Pride for her own products."⁴³ The judge granted the application for the issuance of a preliminary injunction. The issue in this case was whether or not, on the basis of the evidence submitted, the preliminary injunction was correctly issued. The Court held that:

The very foundation of the jurisdiction to issue writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation and the prevention of the multiplicity of suits. Where facts are not shown to bring the case with these conditions, the relief of injunction should be refused.⁴⁴

Therefore, if by its nature, an action does not require protection or preservation, resort to the remedy of preliminary injunction cannot be applied for and cannot be granted.⁴⁵ It is important to note that an injunction is a "special remedy limiting its use to cases where there is no other ordinary, speedy, and adequate remedy" for avoiding or repairing the damage done, by an act in violation of the plaintiff's rights.⁴⁶ The writ of preliminary injunction is the "strong arm of equity," and therefore, should not be used to sanction inequity.⁴⁷

III. GRANT OF PRELIMINARY INJUNCTION

A preliminary injunction may be granted by the court where the action or proceeding is pending.⁴⁸ Specifically, the following may grant a preliminary injunction: (1) the Municipal Court; or (2) the Regional Trial Court; or (3) the Court of Appeals or any member thereof; or (4) the Supreme Court, or any member thereof, where the case is pending.⁴⁹

However, there are recent amendments pertaining to rule 58 of the Rules of Court as to who may grant a preliminary injunction. The Supreme

42. *Id.*

43. *Id.* at 667.

44. *Id.* at 672.

45. *Calo and San Jose v. Roldan*, 76 Phil. 445, 451-52 (1946); *Cootauco v. Court of Appeals*, 162 SCRA 122, 127 (1988).

46. *Palafox v. Madamba*, 19 Phil. 444, 445 (1911).

47. *Ortigas & Company Limited Partnership v. Court of Appeals*, 162 SCRA 165, 168 (1988).

48. 1997 RULES OF CIVIL PROCEDURE, rule 58, § 2.

49. *Id.*

Court Resolution dated 4 December 2007 provides that "[t]he trial court, the Court of Appeals, the Sandiganbayan or the Court of Tax Appeals that issued a writ of preliminary injunction against a lower court, board, officer, or quasi-judicial agency shall decide the main case or petition within six months from the issuance of the writ."⁵⁰ This amendment actually grants the Sandiganbayan and the Court of Tax Appeals authority to issue a writ of preliminary injunction.

It is also important to note that in the grant of preliminary injunction, the court cannot issue such injunction against a co-equal court or a "court of concurrent or coordinate jurisdiction," or an administrative agency.⁵¹ Thus, the Regional Trial Court cannot issue an injunction against the National Labor Relations Commission.⁵² Consequently, an inferior court cannot issue an injunction against the Commission on Elections because it is subordinate to the latter.⁵³

Furthermore, "the court which is to exercise the discretion of granting injunction is the court of original jurisdiction, and not the appellate court."⁵⁴ It may further be observed that the denial of the motion or petition for a preliminary injunction is "not final determination of the matter and is no obstacle to the subsequent granting of a renewed petition for the issuance of such injunction upon fuller information and consideration."⁵⁵

There are several grounds for the issuance of a preliminary injunction. The Rules provide that before a preliminary injunction may be granted, it must be established that:

- (1) 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;
- (2) The commission, continuance of non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (3) 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

50. Supreme Court, Administrative Matter No. 07-7-12-SC, Amendments to Rules 41, 45, 58, and 65 of the Rules of Court, Dec. 4, 2007.

51. *Luciano v. Provincial Governor*, 28 SCRA 517, 538 (1969).

52. *Deltaventures Resources, Inc. v. Cabato*, 327 SCRA 521, 531 (2000).

53. *Commission on Elections v. Datu-Imam*, 304 SCRA 106, 110 (1999).

54. *Aquino v. Luntok*, 184 SCRA 177, 182 (1990).

55. *Sabado v. Cristina Gonzales, Inc.*, 53 Phil. 770, 777-78 (1928).

subject of the action or proceeding, and tending to render the judgment ineffectual.⁵⁶

Therefore, the existence of a right which has been violated is a "prerequisite to the granting of an injunction, and an injunction will not issue to protect a right not in esse and which may never arise."⁵⁷ In effect,

[f]ailure to establish either the existence of a clear and positive right which should be judicially protected through the writ of injunction, or that the defendant has committed or attempts to commit any act which has endangered or tends to endanger the existence of said right, is a sufficient ground for denying the injunction.⁵⁸

In order to be entitled to an injunction, a complainant must be the "real party in interest," that is, one who has an "actual and a substantial interest in the subject matter."⁵⁹ A real party in interest is the "party who would be benefited or injured by the judgment or the party entitled to the avails of the suit."⁶⁰ Also, the "existence of a clear positive right" especially calling for judicial protection must be shown.⁶¹ Otherwise, as already mentioned, the issuance of the writ constitutes grave abuse of discretion.⁶²

The grounds for the granting of a writ of preliminary injunction are more of fact than of law, such that the writ of preliminary injunction is "framed according to the circumstances of a particular case."⁶³ All that the Court is asked to do is to "determine if the plaintiff is entitled to the relief demanded and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually."⁶⁴

The case of *La Vista Association, Inc. v. Court of Appeals*⁶⁵ demonstrates how a writ of preliminary injunction may prosper to remedy a violation of a real party in interest's right. In this case, a 15-meter wide Mangyan Road in Quezon City adjoining Katipunan Avenue on the west, passing through the edges of La Vista Subdivision on the north and of the Ateneo de Manila

University and Maryknoll (now Miriam) College on the south is the subject of an endless dispute. The disagreements between the parties stem from the issue of whether or not there is an easement of right-of-way over Mangyan Road. The Court ruled:

Considering that preliminary injunction is a provisional remedy which may be granted at any time after the commencement of the action and before judgment when it is established that the plaintiff is entitled to the relief demanded and only when his complaint shows facts entitling such reliefs (Section 3 [a], Rule 58) and it appearing that the trial court had already granted the issuance of a final injunction in favor of petitioner in its decision rendered after trial on the merits (Sections 7 & 10, Rule 58, Rules of Court), the Court resolved to dismiss the instant petition having been rendered moot and academic. An injunction issued by the trial court after it has already made a clear pronouncement as to the plaintiff's right thereto, that is, after the same issue has been decided on the merits, the trial court having appreciated the evidence presented, is proper, notwithstanding the fact that the decision rendered is not yet final (II Moran, pp. 81-82, 1980 ed.). Being an ancillary remedy, the proceedings for preliminary injunction cannot stand separately or proceed independently of the decision rendered on the merit of the main case for injunction.⁶⁶

Thus, a "writ of preliminary injunction should only be granted if the party asking for it is entitled thereto."⁶⁷ Moreover, "irreparable injury" justifying an injunction is that which cannot be compensable in money.⁶⁸ While an injunction will be granted if irreparable injury is threatened and impending to the rights of complainant, "injunction will not issue to allay mere fears and apprehensions of individuals."⁶⁹

IV. PRELIMINARY INJUNCTION V. STATUS QUO ORDER

There is a vast difference between a preliminary injunction or a temporary restraining order and a status quo order. A preliminary injunction is an ancillary or preventive remedy resorted to by a party "in the progress of an action in which some substantive relief is sought"⁷⁰ while a status quo order is intended to maintain the "last, actual, peaceable, and uncontested state of things which preceded the controversy."⁷¹ A temporary restraining order is an interlocutory order issued in a case to maintain the subject matter of the controversy in status quo until the hearing of the main application for a

56. 1997 RULES OF CIVIL PROCEDURE, rule 58, § 3.

57. *Rosauro v. Cuneta*, 151 SCRA 570, 575 (1987).

58. *Id.*

59. *House International Building Tenants Association, Inc. v. Intermediate Appellate Court*, 151 SCRA 703, 706 (1987).

60. *Id.*

61. *Prado v. Veridiano II*, 204 SCRA 654, 672 (1991).

62. *Medina v. Sheriff of Manila*, 276 SCRA 133, 139 (1997).

63. *Rosauro v. Cuneta*, 151 SCRA 570, 574 (1987).

64. *Compania General de Tabacos de Filipinas v. Court of Appeals*, 371 SCRA 95, 102 (2001) (citing 1997 RULES OF CIVIL PROCEDURE, rule 58, § 3 (a)).

65. *La Vista Association, Inc. v. Court of Appeal*, 278 SCRA 498 (1997).

66. *Id.* at 506.

67. *Climaco v. Macadaeg*, 4 SCRA 930, 945 (1962).

68. BLACK'S LAW DICTIONARY 786 (6d ed. 1990).

69. 43 C.J.S. *Injunctions* § 21 (1937).

70. OSCAR B. BERNARDO, THE LAW ON CERTIORARI, PROHIBITION, MANDAMUS, RESTRAINING ORDER & INJUNCTION 94 (4d ed. 1996).

71. *Los Baños Rural Bank, Inc. v. Africa*, 384 SCRA 535, 547 (2002).

preliminary injunction is held.⁷² But a status quo order means the "justice department cannot do anything at all from hereon in relation to the preliminary investigation."⁷³

Unlike a temporary restraining order or a preliminary injunction, a status quo order is more in the "nature of a cease and desist order, since it neither directs the doing or undoing of acts" as in the case of prohibitory or mandatory injunctive relief.⁷⁴ With regard to a status quo order, the court in *Garcia v. Mojica*⁷⁵ held that:

There have been instances when the Supreme Court has issued a *status quo* order which, as the very term connotes, is merely intended to maintain the last, actual, peaceable and uncontested state of things which preceded the controversy. This was resorted to when the projected proceedings in the case made the conservation of the *status quo* desirable or essential, but the affected party neither sought such relief or the allegations in his pleading did not sufficiently make out a case for a temporary restraining order. The *status quo* order was thus issued *motu proprio* on equitable considerations.

The further distinction is provided by the present amendment in the sense that, unlike the amended rule on restraining orders, a *status quo* order does not require the posting of a bond.⁷⁶

Although sometimes used interchangeably, a restraining order is distinguished from an injunction in that the restraining order issues without a hearing whereas the injunction follows a hearing.⁷⁷ Thus, the distinction between a temporary restraining order and a preliminary injunction consists in its effect and purpose under existing conditions, and not in the particular phraseology used in the order imposing the restraint.⁷⁸

V. REQUIREMENTS FOR THE ISSUANCE OF PRELIMINARY INJUNCTION

Rule 58 of the Rules provides for the requirements when a preliminary injunction or restraining order may be granted. The formal requirements for the issuance of a preliminary injunction are: (1) the application must be verified and (2) a bond filed to the court where the action or proceeding is

72. *Board of Transportation v. Castro*, 125 SCRA 410, 417 (1983).

73. Alecks P. Pabico, *SC 'status quo' order provides relief to leftists charged with rebellion*, June 15, 2006, <http://www.pcij.org/blog/?p=1002> (last accessed Feb. 29, 2008).

74. *Garcia v. Mojica*, 314 SCRA 207, 215-16 (1999).

75. *Id.*

76. *Id.*

77. *Bernardo v. Court of Appeals*, 168 SCRA 439, 444 (1988).

78. 42 AM. JUR. 2D *Injunctions* § 14 (1969).

pending, executed to the party or person enjoined, in an amount fixed by the court, unless exempted by the court.⁷⁹

When the application for writ of preliminary injunction or temporary restraining order is included in the complainant or initiatory pleading, there are additional requirements to consider other than the aforesaid formal requirements. First, it must be raffled only after notice to and in the presence of the adverse party and person to be enjoined.⁸⁰ Second, it must be proceeded or contemporaneously accompanied by summons together with the copy of the complaint or initiatory pleading.⁸¹

The issuance of a preliminary injunction lies within the sound discretion of the court.⁸² Such sound discretion was exercised by the Court in *Government Service Insurance System v. Florendo*,⁸³ where the Court held that in the issuance of a writ of preliminary injunction, the "courts are given sufficient discretion to determine the necessity for the grant of the relief prayed for as it affects the respective rights of the parties, with the caveat that extreme caution be observed in the exercise of such discretion."⁸⁴ It is also a settled rule that the "issuance of the writ of preliminary injunction is entirely within the discretion of the court taking cognizance of the case, the only limitation being that this discretion should be exercised based upon the grounds and in the manner provided by law."⁸⁵ The exercise of sound judicial discretion by the lower court in injunctive matters should not be interfered with except in cases of manifest abuse.⁸⁶

Section 5 of rule 58 of the Rules provides that preliminary injunction will not be granted "without hearing and prior notice to the party or person sought to be enjoined."⁸⁷ Under this provision, a judge may issue a temporary restraining order within a limited life of 20 days from the date of issue. This is illustrated in the case of *Board of Transportation v. Castro*,⁸⁸ wherein the Court held:

If before the expiration of the 20-day period the application for preliminary injunction is denied, the temporary restraining order would thereby be deemed automatically vacated. If no action is taken by the judge on the

79. 1997 RULES OF CIVIL PROCEDURE, rule 58, § 4.

80. *Id.*

81. *Id.*

82. *Agno River Gold Dredging Co. v. De Leon*, 61 Phil. 190, 193 (1935).

83. *Government Service Insurance System v. Florendo*, 178 SCRA 76 (1989).

84. *Id.* at 88.

85. *Id.* at 88-89.

86. *Id.* at 89.

87. 1997 RULES OF CIVIL PROCEDURE, rule 58, § 5.

88. *Board of Transportation v. Castro*, 125 SCRA 410 (1983).

application for preliminary injunction within the said 20 days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary. A temporary restraining order can no longer exist indefinitely for it has become truly temporary.⁸⁹

Rule 58 of the Rules expressly prohibits the grant of preliminary injunction without hearing and prior notice to the adverse party or person sought to be enjoined.⁹⁰ There is, however, an exception to the general rule such that the courts are authorized to issue *ex-parte* a temporary restraining order if it should appear from the facts shown by affidavits or by the verified petition that great or irreparable injury would result to the applicant before the matter could be heard on notice.⁹¹ The temporary restraining order, however, shall be effective only for a period of 20 days from notice to the party or person sought to be enjoined.⁹² During the 20-day period, the judge must conduct a hearing to consider the propriety of issuing a preliminary injunction.⁹³ At the end of such period, the temporary restraining order automatically terminates without need of any judicial declaration to that effect, leaving the court no discretion to extend the same.⁹⁴

It is important to take note of the fact that it is an abuse of discretion on the part of the court to issue an injunction without notice to the defendant, or without hearing the parties and receiving evidence thereon.⁹⁵ The hearing here pertains a hearing "not intended to be a full-scale hearing on the merits."⁹⁶ The kind and extent of the hearing that will be held on a motion for preliminary injunction is a matter committed largely to the discretion of the court.⁹⁷

VI. TEMPORARY RESTRAINING ORDER

A Temporary Restraining Order (TRO) is an order granted, without notice or hearing, demanding the preservation of the status quo until a hearing can be had determining the propriety of an injunctive relief, permanent or

89. *Id.* at 417.

90. 1997 RULES OF CIVIL PROCEDURE, rule 58, § 5.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. Phil. Virginia Tobacco Administration v. De los Angeles, 164 SCRA 543, 553 (1988).

96. *Id.* at 553-54.

97. BERNARDO, *supra* note 71, at 105.

temporary.⁹⁸ It may be issued if great or irreparable injury will result to the plaintiff before the petition for preliminary injunction can be heard.⁹⁹ It is issued to preserve the status quo until the hearing of the application for preliminary injunction, which cannot be issued *ex parte*.¹⁰⁰

By "irreparable injury" is not meant such injury as is beyond the possibility of repair, or beyond possible compensation in damages, nor necessarily great injury or great damage, but that species of injury, whether great or small, that ought not to be submitted to, on the one hand or inflicted, on the other; and, because it is so large on the one hand, or so small on the other, is of such *constant and frequent* recurrence that no fair or reasonable redress can be had therefore in a court of law.¹⁰¹

The following discussion focuses on the circular released by the Supreme Court to aid in the issuance of the said order. Under Administrative Circular No. 20-95,¹⁰² the Court aims to restrict the *ex parte* issuance of a TRO only

98. BARRON'S LAW DICTIONARY 445 (5d ed. 2003).

99. Llamzon v. Lógronio, 525 SCRA 691, 702 (2007).

100. *Id.*

101. Ollendorff v. Abrahamson, 38 Phil. 585, 595 (1918) (citing Gilchrist v. Cuddy, 29 Phil. 542, 552 (1915)).

102. Supreme Court, Administrative Circular 20-95, Sep. 12, 1995, states the following:

1) Where an application for Temporary Restraining Order [TRO] or writ of preliminary injunction is included in a complaint or any initiatory pleading filed with the trial court, such complaint or initiatory pleading shall be raffled only after notice to the adverse party and in the presence of such party or counsel.

2) The application for a TRO shall be acted upon only after all parties are heard in a summary hearing conducted within twenty-four hours after the records are transmitted to the branch selected by raffle. The records shall be transmitted immediately after raffle.

3) If the matter is of extreme urgency, such that unless a TRO is issued, grave injustice and irreparable injury will arise, the Executive Judge shall issue the TRO effective only for seventy-two hours from issuance but shall immediately summon the parties for conference and immediately raffle the case in their presence. Thereafter, before the expiry of the seventy-two hours, the Presiding Judge to whom the case is assigned shall conduct a summary hearing to determine whether the TRO can be extended for another period until a hearing in the pending application for preliminary injunction can be conducted. In no case shall the total period of the TRO exceed twenty days, including the original seventy-two hours, for the TRO issued by the Executive Judge.

4) With the exception of the provisions which necessarily involve multiple-*sala* stations, these rules shall apply to single-*sala* stations

to cases of extreme urgency, in order to avoid grave injustice and irreparable injury.¹⁰³ Such TRO shall be issued only by the executive judge and shall take effect only for 72 hours from its issuance.¹⁰⁴ Furthermore, within the said period, a summary hearing shall be conducted to determine whether the order can be extended for another period until a hearing on the pending application for preliminary injunction can be conducted.

This is illustrated in the case of *Adao v. Lorenzo*.¹⁰⁵ Here, complainant Edesio Adao was elected barangay captain of Mabuhay, Taft, Eastern Samar. After his proclamation, the losing candidate, Nerio Naputo, filed an election protest. Naputo's lawyers also filed a complaint for injunction to prevent complainant from being elected president in the elections. On the same day the said complaint was filed, respondent judge issued a temporary restraining order. It was alleged that respondent judge acted in violation of Supreme Court Administrative Circular 20-95, as the temporary restraining order was issued by him without notice to complainant and a summary hearing and in the absence of urgency for the issuance of the same; that respondent judge was politically motivated in issuing the TRO because he was promoted to RTC judge through the efforts of former Rep. Jose Ramirez, one of whose supporters is Nerio Naputo's lawyer.¹⁰⁶ The Court ruled that failure to abide by said circular constitutes an offense of grave abuse of authority, misconduct, and conduct prejudicial to the proper administration of justice.¹⁰⁷

Another illustration may be found in *Golangco v. Villanueva*,¹⁰⁸ where a second administrative case was filed by Rene Golangco against respondent Judge Candido Villanueva in connection with a civil case for the declaration of nullity of marriage, with prayer for damages, support, and custody, and for a writ of preliminary injunction.¹⁰⁹ Lucia Golangco filed with the trial court a motion for reconsideration, with urgent prayer for a writ of preliminary injunction.¹¹⁰ She alleged that Rene Golangco was harassing their children and the officials of the school where they were enrolled. He was verbally and

especially with regard to immediate notice to all parties of all applications for TRO.

103. *Ortigas & Company, Limited Partnership v. Ruiz*, 148 SCRA 326 (1987) (citing *National Mines Allied Workers Union v. Valero*, 132 SCRA 578 (1984)).

104. Supreme Court, Administrative Circular 20-95, Sep. 12, 1995.

105. *Adao v. Lorenzo*, 316 SCRA 570 (1999).

106. *Id.* at 573.

107. *Id.* at 579.

108. *Golangco v. Villanueva*, 278 SCRA 414 (1997).

109. *Id.*

110. *Id.* at 417.

physically abusing his sons, which prompted Lucia to file a complaint against him for slight physical injuries. Respondent Judge Villanueva issued a TRO.¹¹¹ The Court held that the judge's disregard of the Supreme Court's pronouncement on such TRO was not just ignorance of the prevailing rule, but also misconduct and grave abuse of authority.¹¹² He was admonished for his failure to act within the reglementary period on the motion of Rene Golangco for the lifting of the writ of preliminary injunction.

The Court permits the *ex parte* issuance of a TRO but subject to certain requirements. To highlight this matter, the case of *Ilaw at Buklod ng Manggagawa v. National Labor Relations Commission*¹¹³ enumerates the conditions¹¹⁴ which must be present for an *ex parte* issuance of the said TRO. These include the complainant's allegation that a substantial and irreparable injury to his property is unavoidable, testimony under oath to justify the issuance of a temporary injunction upon hearing after notice, the filing of an undertaking with adequate security in the form of fees for necessary expenses, among others.¹¹⁵ The order shall be effective for no longer than 20 days and shall become void at the expiration of said 20 days.¹¹⁶

111. *Id.* at 418.

112. *Id.* at 422-23.

113. *Ilaw at Buklod ng Manggagawa v. National Labor Relations Commission*, 198 SCRA 586 (1991).

114. *Id.* at 600-01.

(a) the complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable;

(b) there is testimony under oath, sufficient, if sustained, to justify the Commission in issuing a temporary injunction upon hearing after notice;

(c) the complainant shall first file an undertaking with adequate security in an amount to be fixed by the Commission sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission; and

(d) the temporary restraining order shall be effective for no longer than twenty (20) days and shall become void at the expiration of said twenty (20) days.

115. *Id.*

116. *Id.*

A. When the TRO Takes Effect

It is settled that a TRO takes effect upon its issuance¹¹⁷ and not upon receipt of the parties. Moreover, in computing the effectivity of a TRO, Saturdays, Sundays, and holidays are not excluded. The maximum period of 20 days includes Saturdays, Sundays, and holidays.¹¹⁸

These rules are illustrated in the case of *Marcos-Manotoc v. Agcaoili*.¹¹⁹ In this case, the heirs of the late President Ferdinand E. Marcos filed a 30-party complaint against Puerto Azul Land, Inc. (PALI) to seek the cancellation of the latter's titles to several pieces of real property. The heirs sought to compel the Register of Deeds of Cavite to annotate notices of *lis pendens* on several transfer of certificate titles, all issued in the name of PALI. PALI filed a civil case for injunction and for the issuance of a writ of preliminary injunction and temporary restraining order against complainants and the Register of Deeds of Cavite.¹²⁰

The respondent judge issued a temporary restraining order and scheduled the hearing on the application for a preliminary injunction. The order stated that the TRO "is good until such time that the writ of preliminary injunction shall have been resolved."¹²¹ However, respondent judge did not conduct any hearing on the application for a writ of preliminary injunction. Instead, he issued an order extending the effectivity of the TRO for five more days. Subsequently, respondent judge again extended the period for another 12 days.¹²² This order, however, was amended by respondent judge, which in effect further extended the effectivity of the TRO. Respondent judge even erroneously excluded weekends in his computation. He claimed that the TRO issued by him on 18 June 1996 and received by the parties on 19 June 1996 took effect on 20 June 1996 until 12 July 1996, excluding Saturdays and Sundays. In fact, the TRO was made effective for a total of 23 days, in clear violation of the 20-day rule.¹²³

B. Relevance of Sections 6-9, Rule 58 of the Rules of Court

Section 6 enumerates the grounds for objection to, or for motion for dissolution of, an injunction or a TRO. These include:

117. *Johannesburg Packaging Corporation v. Court of Appeals*, 216 SCRA 439, 452 (1992).

118. *Marcos-Manotoc v. Agcaoili*, 330 SCRA 268, 275 (2000).

119. *Id.*

120. *Id.* at 271.

121. *Id.*

122. *Id.*

123. *Id.* at 275.

- (1) insufficiency of the application;
- (2) filing by the party enjoined of a counterbond in an amount fixed by the court when the issuance or continuance of the injunction or restraining order would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damage as he may suffer; or
- (3) insufficiency of the applicant bond.¹²⁴

It must be noted that the filing of the counterbond is not a matter of right. It must be shown that the issuance or continuance of said TRO would cause irreparable damage to the adverse party.¹²⁵ Its purpose is to answer for all damage which the applicant may suffer by the denial or dissolution of injunction or restraining order.¹²⁶

Section 7 relays the purpose of serving copies of the bond on the other party.¹²⁷ It is to afford the other party the opportunity to verify the sufficiency of the bond, or of the surety or sureties thereon.¹²⁸ A bond that is sufficient in amount with sufficient sureties approved after justification will be required to be filed; otherwise, the injunction shall be dissolved, or the injunction shall be granted or restored.¹²⁹

Section 8, in summary, says that damages should be "claimed, ascertained, and awarded" in the same action.¹³⁰ Otherwise, the same shall be barred.¹³¹

Finally, section 9 states that the issuance of a final injunction renders any question on the preliminary injunctive order moot and academic.¹³² In *La Vista Association, Inc. v. Court of Appeals*,¹³³ the Court categorically pronounced that the issuance of a final injunction renders any question on the preliminary injunctive order moot and academic despite the fact that the

124. 1997 RULES OF CIVIL PROCEDURE, rule 58, § 6.

125. *Id.*

126. *See, Philippine British Assurance Co., Inc. v. Intermediate Appellate Court*, 150 SCRA 520, 527-29 (1987).

127. 1997 RULES OF CIVIL PROCEDURE, rule 58, § 7.

128. *Id.*

129. *Id.*; *See, Commissioner on Internal Revenue v. Court of Appeals*, 257 SCRA 200, 228-30 (1996).

130. 1997 RULES OF CIVIL PROCEDURE, rule 58, § 8; *See, Paramount Insurance Corporation v. Court of Appeals*, 310 SCRA 377, 385-87 (1999).

131. *See, Tan-Suyco v. Javier*, 21 Phil. 82, 89 (1911); *Nueva-España v. Montelibano*, 58 Phil. 807, 810-11 (1933).

132. 1997 RULES OF CIVIL PROCEDURE, rule 58, § 9.

133. *La Vista Association, Inc. v. Court of Appeals*, 278 SCRA 498 (1997).

decision granting a final injunction is pending appeal.¹³⁴ Conversely, a decision denying the applicant-plaintiff's right to a final injunction, although appealed, renders moot and academic any objection to the prior dissolution of a writ of preliminary injunction.¹³⁵

VII. PROHIBITIONS ON PRELIMINARY INJUNCTION

Certain statutes or decrees clearly prohibit the issuance of a preliminary injunction. Among others, National Internal Revenue Code of 1997 disallows any issuance of an injunction to restrain the collection of national internal revenue tax, fee or charge imposed by such law.¹³⁶ Similarly, under section 2 of Presidential Decree No. 385,¹³⁷ it is stated that:

Sec. 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 of the same decree, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that 20 percent of the outstanding arrearages has been paid after the filing of foreclosure proceedings.¹³⁸

Another is Proclamation No. 50-A,¹³⁹ which states that courts may not substitute their judgment for that of the Asset Privatization Trust, nor block by an injunction the discharge of its function and the implementation of its decision in connection with the acquisition, sale, or disposition of assets transferred to it.¹⁴⁰

^{134.} *Id.* at 509.

^{135.} *Id.*

^{136.} An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes [TAX REFORM ACT OF 1997], Republic Act No. 8424, § 218 (1997).

^{137.} Requiring Government Financial Institutions to Foreclose Mandatorily All Loans with Arrearages, Including Interest and Charges Amounting to at Least Twenty (20%) Percent of the Total Outstanding Obligation, Presidential Decree No. 385, § 2 (1974).

^{138.} *Id.*

^{139.} Proclaiming and Launching a Program for the Expeditions Disposition and Privatization of Certain Government Corporations and/or the Assets Thereof, and Creating the Committee on Privatization and the Asset Privatization Trust, Proclamation No. 50-A, 82 O.G. 51 (1986).

^{140.} *Id.* § 31.

The Comprehensive Agrarian Reform Law,¹⁴¹ on the other hand, cites two sections in relation to the issuance of the said injunction. In section 55, the law divests any court in the Philippines of jurisdiction to issue any restraining order or writ of preliminary injunction against the Presidential Agrarian Reform Council or any of its duly authorized or designated agencies in any case, dispute, or controversy arising from, necessary to, or in connection with the application, implementation, enforcement, or interpretation of the law and other pertinent legislations on agrarian reform.¹⁴² Under section 68 of the same law, it states that no injunction, restraining order, prohibition, or *mandamus* shall be issued by the lower courts against the Departments of Agrarian Reform, Department of Agriculture, the Department of Environment and Natural Resources, and the Department of Justice in their implementation of the program.¹⁴³

Under section 3 of Republic Act No. 8975,¹⁴⁴ it provides that:

Sec. 3. *Prohibition on the Issuance of Temporary Restraining Orders, 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 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.¹⁴⁵

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

^{141.} Comprehensive Agrarian Reform Law, Republic Act No. 6657 (1988).

^{142.} *Id.* § 55.

^{143.} *Id.* § 68.

^{144.} An Act to Ensure the Expedient 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, Republic Act No. 8975, § 3 (2000).

^{145.} *Id.*

contract or project.¹⁴⁶ 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.¹⁴⁷

Under the Labor Code,¹⁴⁸ it states that no temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in articles 218 and 264 of the said law. Under section 1 of Presidential Decree No. 605,¹⁴⁹ it provides that:

Sec. 1. No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case involving or growing out of the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever by the proper administrative official or body on concessions, licenses, permits, patents, or public grants of any kind in connection with the disposition, exploitation, utilization, exploration, and/or development of the natural resources of the Philippines.¹⁵⁰

Finally, the Tariffs and Customs Code,¹⁵¹ enumerates the functions of the Bureau of Customs under section 602 which includes the exercise of the exclusive original jurisdiction over seizure and forfeiture cases under the tariff and custom laws.¹⁵² To illustrate, in *Jao v. Court of Appeals*,¹⁵³ the Court

146. *Id.*

147. *Id.*

148. A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, art. 254 (1974).

149. Banning the Issuance by Courts of Preliminary Injunctions in Cases Involving Concessions, Licenses, and Other Permits Issued by Public Administrative Officials or Bodies for the Exploitation of Natural Resources, Presidential Decree No. 605, § 1 (1974).

150. *Id.*

151. An Act to Revise and Codify the Tariff and Customs Laws of the Philippines [TARIFFS AND CUSTOMS CODE], Republic Act No. 1937 (1957).

152. *Id.* § 602.

153. *Jao v. Court of Appeals*, 249 SCRA 35 (1995).

held that the Regional Trial Court is devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the Bureau of Customs and to enjoin or otherwise interfere with these proceedings.¹⁵⁴ The Collector of Customs sitting in seizure and forfeiture proceedings has exclusive jurisdiction to hear and determine all questions touching on the seizure and forfeiture of dutiable goods. The Regional Trial Courts are precluded from assuming cognizance over such matters even through petitions of *certiorari*, prohibition or *mandamus*.¹⁵⁵

VII. CONCLUSION

The rules of procedure are aimed at the proper administration of justice. While these are liberally construed, they are to be closely observed in order for cases to continue and prosper. Without these, the probability of postponements and delays increases and the tendency for cases to remain in litigation, thereby clogging the courts' dockets, is present. As earlier mentioned, when it clearly requires, courts will resort to the equitable remedies in the form of court orders. These are not merely limited to granting of preliminary injunctions together with the issuance of temporary restraining orders. Other such remedies include petitions for review and petitions for prohibition, *certiorari* and *mandamus* under rule 65 of the Rules of Court and the like.¹⁵⁶

The explanations and laws earlier discussed conveyed the nature, exceptions, effects, and purpose of the specific remedy of an injunction and issuance of a temporary restraining order. The use, petition and subsequent grant of such a remedy must yield to its requirements and the courts will not issue such prior to the fulfillment of the said requirements. The Article highlighted the importance of procedure in the legal field while focusing itself on injunction as a remedy.

154. *Id.* at 37.

155. *Id.*

156. 1997 RULES OF CIVIL PROCEDURE, rule 65, §§ 1-3.