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as a dummy, and so many other defects or vices of the title, *ad infinitum*. The ruling of the respondent court is contrary to the reasons behind the indefeasibility of a Torrens Title."

We, therefore, hold that the respondent Court of Appeals erred in sustaining the trial court's denial of the motion to dismiss by herein petitioners for the reasons already stated above.

WHEREFORE, the petition is hereby GRANTED and the decision and resolution of the Court of Appeals dated July 23, 1970 and January 27, 1971, respectively, are ANNULLED and SET ASIDE. A new one is entered ordering the DISMISSAL of Civil Case No. Q-12160 before the then Court of First Instance of Rizal, Quezon City Branch.

SO ORDERED.

Feliciano, Bidin, and *Cortés, JJ.*, concur.

Fernan, C. J. (Chairman), no part, as the *ponente* in the Court of Appeals is his father-in-law.

THIRD DIVISION

[G.R. No. 67195. May 29, 1989]

HEIRS OF EUGENIA V. ROXAS, INC., BENIGNA V. ROXAS, JULITA N. ROXAS, VICTORIA R. VALLARTA, JUANITA ROXAS, and MARGARITA R. TIOSECO, *petitioners, vs.* **INTERMEDIATE APPELLATE COURT, REBECCA BOYER-ROXAS, GUILLERMO LUIS ROXAS, JUDITH ROXAS and MARIA PILAR ROXAS,** *respondents.*

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[G.R. No. 78618. May 29, 1989]

HEIRS OF EUGENIA V. ROXAS, INC., *petitioners, vs.* **HON. JOSE ANTONIO U. GONZALES, in his capacity as Secretary of Tourism, SOSTENES L. CAMPILLO, JR., in his capacity as Undersecretary of Tourism Services, both of the Department of Tourism and GUILLERMO ROXAS, doing business under the name and style "MJB Food and Services,"** *respondents.*

[G.R. Nos. 78619-20. May 29, 1989]

HEIRS OF EUGENIA V. ROXAS, INC., *petitioners, vs.* **HON. ODILON I. BAUTISTA, Judge Presiding over Branch 37 of the Regional Trial Court of Calamba, Laguna, HON. JAIME GASAPOS, in his capacity as OIC Calauan, Laguna, and GUILLERMO ROXAS, doing business under the name and style MJB FOOD and SERVICES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; DEFINED. — At times referred to as the "Strong Arm of Equity," the writ of preliminary injunction, whether prohibitory or mandatory, is sought for the protection of the rights of a party *before the final determination of his rights vis-a-vis others' in a pending case before the court.*

2. ID.; ID.; ID.; GROUNDS FOR ISSUANCE. — It will issue only upon a showing that there exists a clear and present right to be protected and that the facts upon which the writ is to be directed are violative of said right. It cannot be over-emphasized that the mere prayer for the preservation of the *status quo* pending the appellate court's adjudication of the issues is not sufficient to warrant the issuance of this writ. "The possibility of irreparable damage, without proof of violation of an actually existing right, is no ground for an injunction, being a mere *damnum obsque injuria.*"

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3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION IN THE ABSENCE OF A CLEAR AND PRESENT RIGHT, AN ABUSE OF DISCRETION; CASE AT BAR. — After a careful consideration of the undisputed facts and the arguments of the parties, the Court finds that the IAC acted without or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the writ of preliminary injunction. Private respondents failed to establish a clear and present right to continue operating the restaurant and liquor concession at the resort considering that they, who were then incorporated and doing business under HVABR, had NO license or authorization from the MOT to operate the restaurant and liquor concession in the resort. Without a license private respondents cannot legally continue to operate the restaurant, and therefore they cannot claim a right which could be protected by a writ of preliminary injunction.

4. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; WRIT ISSUED ALLOWING CONTINUANCE OF OPERATION OF RESTAURANT AND LIQUOR CONCESSION WITHOUT THE REQUIRED MINISTRY OF TOURISM LICENSE, DECLARED NULL AND VOID. — The Court is compelled to declare null and void the writ issued by the IAC which allowed private respondents to continue their operation of the restaurant and liquor concession despite absence of the requisite MOT license permitting them to do so, thereby sanctioning their illegal operation.

5. ID.; ACTIONS, MOOT AND ACADEMIC; CONSTRUED. — A case is considered moot and academic when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy, or where no practical relief can be granted.

6. ID.; SPECIAL CIVIL ACTIONS; PROHIBITION; FUNCTION OF THE WRIT. — The function of the writ of prohibition is to prevent the doing of some act which is about to be done. It is not intended to provide a remedy for acts already accomplished.

7. ID.; ACTIONS; CAUSE OF ACTION; DETERMINED BY SUBSTANCE AND AVERMENTS, NOT THE TITLE OR CAPTION OF PLEADINGS. — It is not the title or caption of a pleading, but the substance and averments thereof that is

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controlling; so that, in the interest of justice, although a petition is styled "Prohibition," it may be considered a petition for *certiorari* if the facts alleged make out a case for the issuance of the latter writ.

8. ID.; EVIDENCE; FINDINGS OF FACT OF EXECUTIVE AGENCIES AND ADMINISTRATIVE BODIES, GENERALLY NOT INTERFERED WITH BY THE COURTS; EXCEPTIONS. — Courts of justice will generally not interfere in executive and administrative matters which are addressed to the sound discretion of government agencies, such as, the grant of licenses, permits, leases, or the approval, rejection or revocation of applications therefor. However, there is a limit to the deference accorded by the courts to the actions of such agencies. Jurisprudence is replete with cases wherein the Supreme Court expounded on the exception to the general rule as there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

9. ID.; ID.; ID.; ID.; CASE AT BAR. — The Court holds that it was an arbitrary and capricious exercise of discretion on the part of public respondents to have issued, and thereafter to have refused to revoke, the restaurant license in favor of Guillermo Roxas and/or MJBFS knowing that: (1) the latter was not the owner of the restaurant for which the license was sought; (2) the latter's right to possess the same was being disputed by no less than petitioner as restaurant owner; and, (3) the subject restaurant was already leased to Valley Resort Corporation pursuant to a contract of lease approved by the department.

10. ID.; PROVISIONAL REMEDIES; INJUNCTION; GRANT THEREOF LIES WITHIN THE SOUND DISCRETION OF THE COURT. — Whether or not a writ of injunction will issue lies exclusively within the discretion of respondent judge, and this Court will not interfere with the exercise of respondent judge's discretion unless there is a showing of grave abuse.

11. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; AN ACT TO BE CONTUMACIOUS MUST BE CLEARLY CONTRARY OR PROHIBITED BY THE COURT. — "Well-settled is the rule that an act to be considered contemptuous must be clearly contrary or prohibited by the order of the Court. 'A person cannot, for disobedience, be punished for contempt unless the

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act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.'"

APPEARANCES OF COUNSEL

Benito P. Fabie for petitioners.
Conrado L. Manicad for public respondent.
Ramon C. Fernandez for private respondents.

D E C I S I O N

CORTES, *J.*:

These consolidated cases relate to various incidents in the long running dispute between the heirs of Eufrocino and Eugenia Roxas regarding the operation of a restaurant within the Hidden Valley Springs Resort in Calauan, Laguna.

All of the instant petitions filed by the petitioners arise from the same factual antecedents and are bound by petitioners' singular intent of enjoining private respondents from operating the restaurant at the Hidden Valley Springs Resort. It must be clear, however, that the issue as to who has the legal right to operate the subject restaurant is not for this Court to decide in these petitions, for such issue is the crux of the appeal pending before the Court of Appeals. For the present, the Court is only called upon to determine whether or not grave abuse of discretion as would vitiate the jurisdiction of the public respondents and would warrant the annulment of their assailed resolutions and/or orders, was committed.

FACTS OF THE CASE

Petitioner corporation, Heirs of Eugenia V. Roxas, Inc. (hereinafter referred to as HEVR), was incorporated on December 4, 1962 by the late Eufrocino Roxas and his seven children (Pedro, Benigna, Julita, Antonio, Ramon, Victoria and Eriberto), with the primary purpose of owning and developing the properties of Eufrocino Roxas and the estate of his late

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wife, Doña Eugenia V. Roxas, located in the Province of Laguna. Petitioners Benigna V. Roxas, Julita N. Roxas, Victoria R. Vallarta, Juanita Roxas and Margarita R. Tioseco are some of the surviving heirs of Eufrocino and Eugenia Roxas.

In 1971, its articles of incorporation were amended to include the operation of a resort among its purposes. In early 1972, it opened to the public the Hidden Valley Springs Resort, situated in Calauan, Laguna.

Eufrocino Roxas was Chairman of the Board of Directors and President of HEVR until the time of his death on August 28, 1979. One of his sons, Eriberto, a director, was manager of the resort until his death in 1980. He also succeeded his father as President upon the latter's demise.

Private respondents are the heirs of Eriberto Roxas: Rebecca Boyer-Roxas, his wife; Guillermo Luis and Maria Pilar, his children; and Judith Roxas, his daughter-in-law.

Eriberto Roxas and his family had been exclusively operating the restaurant and liquor concession at the resort under an "Agreement" dated May 27, 1975 executed between Eufrocino Roxas, as President of HEVR, and Eriberto Roxas, in his behalf and that of his family.

When Eriberto Roxas was taken ill a few months before his death, Guillermo Roxas took it upon himself to take over all the corporate duties and assume the authority of his father pertaining to the resort.

After Eriberto Roxas' death on December 4, 1980, private respondents continued the operations of the restaurant and liquor concession. In 1981, they incorporated under the name "Hidden Valley Agri-Business and Restaurant, Inc." (hereinafter referred to as HVABR), and through this entity they continued to carry on the concession.

The HEVR held a stockholders' and Board of Directors' meeting on January 31, 1981, elected members of the Board and appointed officers of the corporation. The Board then set up a management committee and commenced an inquiry into

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the financial status of the resort, requiring Guillermo Roxas to submit documents relative to its earnings and expenditures. Steps were subsequently taken to restrict private respondents' previously unlimited access to the corporate funds. Not surprisingly, private respondents were defiant.

In the Board meeting of July 30, 1981, the treasurer of HEVR reported that the income of the resort could not satisfy its payroll requirements and loan amortizations. It appeared that the resort's financial difficulty was due to the fact that the biggest profit center, the restaurant therein, was not managed and operated by HEVR itself and that the concession fee paid by private respondents was not even enough to pay for the interest and amortizations on the loan secured by HEVR to upgrade the restaurant and kitchen facilities. It was suggested that HEVR should take over the operation of the restaurant. Hence, the Board of Directors adopted Resolution No. 3-81 authorizing the President to notify HVABR of its intent to take over the operation of the restaurant, and in the event the latter refuses or fails to peaceably vacate the premises within thirty (30) days from notice, to close the resort for an indefinite period of time to prevent further losses to the corporation, and finally to order a financial, legal and management audit of the operations of the resort [*Rollo*, G.R. No. 67195, p. 99]. The President then sent a letter dated August 13, 1981 to private respondents informing them of the above resolution, and asking them to vacate the restaurant premises and to turn over possession thereof to HEVR.

Private respondents consequently filed on September 18, 1981 an action for injunction with a prayer for preliminary injunction and/or restraining order against HEVR and the other petitioners, including Rafael J. Roxas, in the Regional Trial Court (RTC) of San Pablo, Laguna, docketed as Civil Case No. SP-1920, to prevent the closure of the resort and the unilateral termination by HEVR of the concession agreement.

The petitioners, in their answer, prayed for the dismissal of the complaint, the declaration of the nullity of the concession

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agreement, and for an order requiring private respondents to vacate and surrender the restaurant premises.

In the meantime, HVABR filed with the Bureau of Tourism Services of the Ministry of Tourism (MOT) a petition to increase the food and beverage prices at the resort restaurant. HEVR, being the holder of a license to operate the resort, contested this petition by impugning the authority of HVABR to file the petition and to continue operating the restaurant.

Pending resolution of HVABR's petition in the MOT, the RTC, on June 13, 1983, dismissed private respondent's complaint. The concession agreement between Eriberto and Eufrocino Roxas was declared null and void for being *ultra vires* since it was neither authorized nor ratified by the Board of HEVR, and for being violative of the doctrine of corporate opportunity as embodied in Section 34 of the Corporation Code.[1] The trial court also upheld Resolution No. 3-81 as a valid and reasonable exercise of corporate power by the Board of Directors of HEVR [*Id.* at pp. 88-113].

With the decision of the trial court to support them, HEVR immediately caused the temporary closure of the resort.

Private respondents, on the other hand, appealed to the Intermediate Appellate Court (IAC) on June 27, 1983 (AC-G.R. CV No. 00764), and in an "Urgent Omnibus Motion"[2] prayed for the issuance of a writ of preliminary injunction to prohibit petitioners from closing the resort [*Id.* at pp. 114-126.].

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[1] Sec. 34. *Disloyalty of a director.* — Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same, unless his act has been ratified by a vote of the stockholders, owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture.

[2] The "Urgent Omnibus Motion" was originally docketed as AC-G.R. No. SP-01026, but was subsequently consolidated with the appealed case AC-G.R. CV No. 00764.

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On July 22, 1983, the IAC granted a temporary restraining order (TRO) which not only directed petitioners to refrain from further commission of "acts that will tend to interfere, impede, frustrate and obstruct the operation by plaintiffs-appellants [private respondents herein] of the restaurant and liquor concession at the Hidden Valley Springs Resort," but also "to undo such acts" if already done [*Id.* at p. 131.].

Immediately thereafter, petitioners filed a Comment to the appellants' "Urgent Omnibus Motion," praying for the lifting of the TRO [*Id.* at pp. 134-143.].

Meanwhile, the MOT promulgated on July 28, 1983 its resolution dismissing HVABR's petition, finding *inter alia* that HVABR was operating the restaurant and liquor facilities of the resort without the requisite MOT license. The dispositive portion of the resolution provides in part:

> WHEREFORE, in view of the foregoing considerations, we hereby resolved to:
>
> xxx xxx xxx
>
> 2. The Heirs of Eugenia V. Roxas, Inc. (HEVR) is hereby ORDERED TO TAKE OVER IMMEDIATELY the active management and operation of the RESTAURANT and WINE outlets of the Hidden Valley Springs Resort from the Hidden Valley Agri-Business & Restaurant, Inc. (HVABR).
>
> 3. The Hidden Valley Agri-Business & Restaurant Inc. (HVABR) and/or any person claiming under it the management and operation of the RESTAURANT and WINE outlets of the Hidden Valley Springs Resort, Inc. is hereby ORDERED to CEASE and DESIST from and to TURN OVER IMMEDIATELY to the Heirs of Eugenia V. Roxas, Inc. (HEVR), the MANAGEMENT and OPERATION of the RESTAURANT and WINE outlets of the Hidden Valley Springs Resort;
>
> 4. The Director of the Bureau of Tourism Services is hereby ORDERED NOT TO ISSUE in favor of the Hidden Valley Agri-Business Inc. (HVABR) a Provisional Authority to operate the restaurant outlet of the Hidden Valley Springs Resort;

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xxx xxx xxx

9. Considering that the rightful owner/operator of the Hidden Valley Springs Resort, the Heirs of Eugenia V. Roxas, Inc. (HEVR), has been deprived of its right to operate and/or manage the restaurant and wine outlets of the resort for a considerable length of time already and the added fact that the present operator of said outlets of the resort has been operating the same *illegally for quite a long period of time already notwithstanding the mandate of the Rules of this Ministry that only licensed operators may operate the same*, to immediately stop such illegal act, this Resolution is hereby declared IMMEDIATELY EXECUTORY.

SO ORDERED.

[*Id.* at pp. 153-155.]

Private respondents filed a Manifestation (actually a motion for reconsideration) seeking to hold in abeyance the execution of the aforementioned judgment. However, the MOT subsequently issued its Order dated August 3, 1983 reiterating its findings and emphasizing the final and executory nature of its directive [*Id.* at pp. 202-205.]

Petitioners then filed on August 31, 1983 with the IAC a Manifestation inviting the attention of the appellate court to the above MOT resolution and Order [*Id.* at pp. 199-201.]

In the following month, petitioners filed a motion to dismiss the appeal and an application for a writ of preliminary injunction alleging that private respondents had no right to operate the restaurant per the August 3, 1983 MOT Order, and that in fact they had ceased operating the same since September 8, 1983, thereby rendering the appealed injunction case moot and academic [*Id.* at pp. 206-212.]

However, on October 3, 1983, the IAC promulgated a resolution whereby petitioners were enjoined from disturbing the *status quo* or from doing acts that tend to frustrate, impede, obstruct, disturb or interfere with the operation by private respondents of the restaurant and liquor concession. The IAC opined:

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Since, the complaint filed by the plaintiffs-appellants was for the purpose of seeking to enjoin and restrain the defendant-appellees from closing the subject resort, the issue is thus the object of the appeal which is perfected and now pending before us.

To allow defendants-appellees to close the resort in question would thus amount to execution of the decision pending appeal, and,

> "Execution pending appeal, being an exception to the general rule that execution may issue only after the decision in any case has become executory, may issue only upon allegation and proof of the existence of a special reason therefor." (*De la Rea v. Subido*, G.R. No. L-26082, March 1, 1968, 22 SCRA 953)

The decision in the main case was rendered on June 13, 1983 and plaintiffs-appellants filed their Notice of Appeal on June 18, 1983. The appeal was given due course on July 6, 1983 and is now before this Court. No special reason is cited for immediate execution pending appeal nor is such execution pending appeal properly applied for. [*Id.* at p. 78.]

Then Associate Appellate Justice Bidin[3] dissented, stressing the failure of private respondents to establish a clear right to continue operating the restaurant in view of the dismissal of their action in the lower court and the MOT resolution of July 28, 1983.

Petitioners filed a motion for reconsideration with the IAC on October 13, 1983.

On November 3, 1983, the MOT denied private respondents' motion for reconsideration [*Id.* at pp. 277-300.] Thus, petitioners once again filed a Manifestation dated November 5, 1983 with the IAC, informing it of this denial [*Id.* at pp. 275-276.]

On November 17, 1983, petitioners filed another Manifestation and Motion with the IAC, bringing to said court's attention an October 27, 1983 decision of the Bureau of Domestic Trade rendered in C.A.D. Case No. 343, wherein the Bureau found that HVABR was operating the restaurant in violation of the Retail Trade Nationalization Law (Republic Act No. 1180, as

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[3] Presently, Associate Justice of the Supreme Court.

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amended) because one of its stockholders, Rebecca Boyer-Roxas, was a foreigner actually participating in the operation and management of the restaurant [*Id.* at pp. 301-303.]

This notwithstanding, the IAC promulgated its April 4, 1984 resolution denying petitioner's motion for reconsideration and motion to dismiss the appeal, with Justice Bidin dissenting once again [*Id.* at pp. 82-87.] Aggrieved by the IAC resolutions, petitioners, with the exception of Rafael J. Roxas, brought a petition for *certiorari*, prohibition and *mandamus* with preliminary injunction in this Court docketed as G.R. No. 67195.

On May 16, 1984, the Court issued a temporary restraining order to stop the IAC from enforcing and/or carrying out the resolutions dated October 3, 1983 and April 4, 1984 and its writ of preliminary injunction [*Id.* at pp. 350-351.]

On September 2, 1985, HEVR entered into a contract of lease with Valley Resort Corporation, whereby the latter leased the Hidden Valley Springs Resort, with all the equipment, vehicles, facilities and structures used in the resort operation, including the subject restaurant premises, for a term of ten (10) years. After the contract was approved by the MOT on September 4, 1985, a MOT license to operate the Hidden Valley Springs Resort was issued to Valley Resort Corporation effective until July 31, 1987 [*Rollo*, G.R. No. 78618, pp. 92-104.]

On the other hand, during the pendency of G.R. No. 67195, respondent Guillermo Roxas, doing business under the name and style "MJB Food and Services" (hereinafter referred to as MJBFS), obtained on March 23, 1987 a license dated March 3, 1987 from the Department of Tourism (DOT) to operate the restaurant at the Hidden Valley Springs Resort as a "Class A-De Luxe" restaurant [*Id.* at p. 110.] Various letters were sent by HEVR to the DOT contesting the issuance of the license alleging, *inter alia*, that Guillermo Roxas was not authorized to possess and operate the restaurant [*Id.* at pp. 105-121.]

No response was heard from the DOT until the Secretary of Tourism sent a letter to HEVR dated June 1, 1987 refusing to reconsider the issuance of the license to MJBFS. Hence,

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HEVR filed the herein second petition docketed as G.R. No. 78618, on June 11, 1987, seeking the nullification of the license issued to MJBFS.

A temporary restraining order was issued by the Court on June 22, 1987. The order restrained the Secretary of Tourism from "allowing respondent Guillermo Roxas from utilizing the license in question to operate the restaurant inside the Hidden Valley Springs Resort and in the restaurant building/premises owned by petitioner, and from further granting license to said respondent Roxas under any business name he may use to apply therefor" [*Id.* at pp. 124-125.]

Prior to the filing of the second petition, a mayor's permit to engage in the restaurant business was issued by Hon. Jaime Gasapos, the Officer-in-Charge (OIC) of Calauan, Laguna, to Guillermo Roxas/MJBFS on March 30, 1987, despite protests by HEVR. Thus, HEVR filed a complaint for injunction on April 6, 1987 in the Regional Trial Court (RTC) of Calamba, Laguna, docketed as Civil Case No. 1086-87-C, against the OIC and Guillermo Roxas from utilizing the mayor's permit in order to operate the resort restaurant. In its Order dated April 29, 1987, the trial court denied HEVR's prayer for the issuance of a writ of preliminary injunction. HEVR's subsequent motion for reconsideration was likewise denied.

Consequently, HERV filed a third petition in this Court, docketed as G.R. Nos. 78619-78620, assailing the RTC Orders in Civil Case No. 1086-87-C.

The Court issued a temporary restraining order on June 23, 1987 restraining respondent Guillermo Roxas and/or MJBFS from utilizing the Mayor's permit to operate the subject restaurant [*Rollo*, G.R. Nos. 78619-78620, pp. 183-184.]

Incidentally, on March 31, 1987 a motion to declare Guillermo Roxas in contempt of court in G.R. No. 67195 was filed by petitioners therein, on the ground that he violated the Court's temporary restraining order dated May 16, 1984 when he obtained the DOT license to operate the resort restaurant [*Rollo*, G.R. No. 67195, pp. 510-525.]

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On June 22, 1987, G.R. Nos. 78619-78620 were ordered consolidated with G.R. No. 67195 [*Rollo*, G.R. Nos. 78619-78620, p. 182.] On July 27, 1987, G.R. No. 78618 was ordered consolidated with G.R. No. 61795 and G.R. Nos. 78619-78620 [*Rollo*, G.R. No. 78618, p. 157.]

G.R. No. 67195

In this petition for *certiorari*, prohibition and *mandamus* with preliminary injunction, petitioners pray for the nullification of the October 3, 1983 and the April 4, 1984 Resolutions of the IAC.

The issues raised in this petition may be paraphrased as follows:

I. Whether or not Respondent IAC gravely abused its discretion tantamount to lack of or excess of jurisdiction in granting the writ of preliminary injunction; and

II. Whether or not Respondent IAC gravely abused its discretion tantamount to lack of or excess of jurisdiction in denying the petitioner's Motion to Dismiss the Appeal.

I

At times referred to as the "Strong Arm of Equity," the writ of preliminary injunction, whether prohibitory or mandatory, is sought for the protection of the rights of a party *before the final determination of his rights vis-a-vis others' in a pending case before the court.* It will issue only upon a showing that there exists a clear and present right to be protected and that the facts upon which the writ is to be directed are violative of said right [*Angela Estate Inc., et al. v. CFI of Negros Occidental, et al.*, G.R. No. L-27084, July 31, 1968, 24 SCRA 500; *Locsin v. Climaco,* G.R. No. L-27319, January 31, 1969, 26 SCRA 816; *Buayan Cattle Co., Inc. v. Quintillan,* G.R. No. L-26970, March 19, 1984, 128 SCRA 276.] It cannot be over-emphasized that the mere prayer for the preservation of the *status quo* pending the appellate court's adjudication of the issues is not sufficient to warrant the issuance of this writ. "The possibility of irreparable damage, without proof of violation of an actually existing right, is no ground for an injunction, being

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a mere *damnum obsque injuria*" [*Bacolod-Murcia Milling Co., Inc., et al. v. Capitol Subdivision, Inc., et al.*, G.R. No. L-25887, July 26, 1966, 17 SCRA 731, 737.]

With these principles in mind, and after a careful consideration of the undisputed facts and the arguments of the parties, the Court finds that the IAC acted without or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the writ of preliminary injunction.

Private respondents failed to establish a clear and present right to continue operating the restaurant and liquor concession at the resort considering that they, who were then incorporated and doing business under HVABR, had NO license or authorization from the MOT to operate the restaurant and liquor concession in the resort. Without a license private respondents cannot legally continue to operate the restaurant, therefore they cannot claim a right which could be protected by a writ of preliminary injunction.

Petitioners invited the attention of the IAC to the July 28, 1983 MOT Resolution finding that HVABR lacked the requisite license to operate the restaurant and liquor facilities in the resort, and the August 3, 1983 MOT Order directing HVABR to desist from operating the restaurant and to effect its closure [*See* Petitioners' Manifestation, Rollo, G.R. No. 67195, pp. 199-201.] The IAC nevertheless promulgated its October 3, 1983 Resolution granting private respondents' prayer for a writ of preliminary injunction.

Subsequently, petitioners brought to the attention of the IAC the MOT resolution denying HVABR's motion for reconsideration as well as the Bureau of Domestic Trade decision finding that HVABR's restaurant business violated the Retail Trade Nationalization Law [*See* Petitioners' Manifestation and Motions, *Id.* at pp. 275-276; 301-304.] Once again, the IAC denied petitioners' motions in its April 4, 1984 Resolution.

Contrary to the IAC's opinion, the July 28, 1983 MOT Resolution was not based on the trial court's conclusion that the disputed concession agreement was invalid. As correctly

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pointed out by the petitioners, the MOT Resolution and Order were based on the undisputed fact that HVABR was operating the restaurant and liquor facilities of the resort without the requisite license.

More importantly, the IAC ignored the basic implication of these circumstances — that HVABR's unlicensed restaurant business was in gross violation of the Rules of the MOT and tantamount to a criminal offense punishable under Sec. 19 (b) and (c) of PD 1463.[4]

In fact, the MOT, in its August 3, 1983 Order denying private respondent's manifestation (motion for reconsideration), opined that:

> . . . to grant the prayer contained in the Manifestation (actually motion) under consideration would sweep away the barrier erected by the law against unlicensed operators of tourism-oriented establishment [sic]. Indeed, even by the greatest violence of construction of our powers and extravagant exercise of our discretion, we cannot, without being prodigal in our actuation, grant the said prayer of the movant; which could be dangerous influence with respect to subsequent cases that may come before us for resolution.
>
> Again, to grant the prayer contained in the Manifestation under consideration would amount to a *condonnation* [sic] of the illegal

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[4] *Sec. 19. Penalties.* —

x x x x x x x x x

(b) Violation by a Non-Holder of Authority. — Any person who is not a holder of a license, accreditation, permit or any other authority from the department who shall violate or cause another to violate any of the provisions of this Decree or the rules and regulations or circulars promulgated by the department shall, upon conviction of a competent court, suffer the penalty of imprisonment of not less than one (1) year nor more than six (6) years or a fine of not less than Four Thousand Pesos (₱4,000.00) nor more than Twenty Thousand Pesos ₱20,000.00), or both, at the discretion of the court.

(c) Penalty imposed upon Officers of Juridicial Persons. — If the offender is a corporation, partnership, firm or association, the penalty shall be imposed upon the officer or officers who have been responsible for the violation.

x x x x x x x x x

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act that has been and still is, being committed by the management of the HIDDEN VALLEY AGRI-BUSINESS & RESTAURANT, INC. (HVABR) and thus give a premium to a violation of the law. *Precisely we declared our resolution "IMMEDIATELY EXECUTORY" so as to put an immediate stop to its illegal act.* Movant is thus plainly in error in claiming that "the same is not yet final and executory." [*Id.* at p. 204.]

Consequently, the Court is compelled to declare null and void the writ issued by the IAC which allowed private respondents to continue their operation of the restaurant and liquor concession despite absence of the requisite MOT license permitting them to do so, thereby sanctioning their illegal operation [*See Suarez v. Reyes*, G.R. No. L-19828, February 28, 1963, 7 SCRA 461; *Utleg v. Arca,* G.R. No. L-25026, August 31, 1971, 40 SCRA 597.]

II

Petitioners allege that the aforementioned MOT resolutions as well as the decision of the Bureau of Domestic Trade which declared private respondents' restaurant business violative of the Retail Trade Nationalization Law, rendered the main issue in the injunction case on appeal before the IAC moot and academic.

The above contention springs from an erroneous analysis of the issues and must be rejected.

A case is considered moot and academic when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy, or where no practical relief can be granted [*Meralco Workers Union v. Yatco,* G.R. No. L-19785, January 30, 1967, 19 SCRA 177; *Bongat v. BLR,* G.R. No. L-41039, April 30, 1985, 136 SCRA 225.]

The issue in the injunction case, which is now raised on appeal before the IAC, hinges on a determination of the contractual relationship between the petitioners and private respondents as heirs of Eufrocino and Eugenia Roxas *vis-a-vis* the operation and management of the restaurant and liquor concession in the resort. Its resolution rests on a judicial declaration of the validity

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or nullity of the disputed concession agreement between the parties. This issue is unaffected by the fact that private respondents have no license to operate the restaurant, or that the participation of Rebecca Boyer-Roxas in HVABR's activities was violative of the Retail Trade Nationalization Law, for the rights between the parties remain largely unsettled.

G.R. No. 78618

In this petition for prohibition with preliminary injunction, petitioner HEVR seeks to nullify MJBFS' license to operate the restaurant in the Hidden Valley Springs Resort and to prohibit the DOT from issuing any other license to respondent Guillermo Roxas.

The function of the writ of prohibition is to prevent the doing of some act which is about to be done. It is not intended to provide a remedy for acts already accomplished [*Cabanero v. Torres,* 61 Phil. 522 (1935); *Agustin, et al. v. de la Fuente*, 84 Phil. 515 (1949); *Navarro v. Lardizabal,* G.R. No. L-25361, September 28, 1968, 25 SCRA 370.]

As a license to operate the restaurant had already been issued to private respondents, a writ of prohibition cannot issue.

Nevertheless, it does not mean that no other affirmative relief may be given to petitioner if found to be deserving. For it is not the title or caption of a pleading, but the substance and averments thereof that is controlling; so that, in the interest of justice, although a petition is styled "Prohibition," it may be considered a petition for *certiorari* if the facts alleged make out a case for the issuance of the latter writ [*Cajefe, et al. v. Fernandez, et al.,* 109 Phil. 743 (1960); *See* also *Concepcion v. Vera, et al.*, 67 Phil. 122 (1939); *Tambunting de Tengco v. San Jose, et al.*, 97 Phil. 491 (1955).]

The Court will treat the instant petition as if it were a special civil action for *certiorari.*

It is a recognized principle that courts of justice will generally not interfere in executive and administrative matters which are addressed to the sound discretion of government agencies, such

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as, the grant of licenses, permits, leases, or the approval, rejection or revocation of applications therefor [*Manuel v. Villena,* G.R. No. L-28218, February 27, 1971, 37 SCRA 745.] However, there is a limit to the deference accorded by the courts to the actions of such agencies. Jurisprudence is replete with cases wherein the Supreme Court expounded on the exception to the general rule.[5]

In laying down the guidelines for the review of decisions of administrative agencies in the exercise of their quasi-judicial powers, the Supreme Court, in the oft-cited case of *Pajo, et al. v. Ago, et al.*, 108 Phil. 905 (1960), stated that:

> In general, courts have no supervising power over the proceedings and actions of the administrative departments of the government. This is generally true with respect to acts involving the exercise of judgment or discretion, and findings of fact. Findings of fact by an administrative board or officials, following a hearing, are binding upon the courts and will not be disturbed except where the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion. And we have repeatedly held that there is grave abuse of discretion justifying the issuance of the writ of *certiorari* only when there is capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction . . . as where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty, or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law . . . [*Id.* at pp. 915-916.]

This standard has been unequivocally embraced in the 1987 Constitution, which affirms the power of the judiciary to determine whether or not there has been grave abuse of discretion amounting

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[5] See *Espinosa v. Makalintal,* 79 Phil. 134 (1947); *Antiquera v. Baluyot,* 91 Phil. 213 (1952); *Ganitano v. Sec. of Agriculture and Natural Resources,* G.R. No. L-21167, March 31, 1966, 16 SCRA 543; *Villegas v. Auditor General,* G.R. No. L-21352, November 29, 1966, 18 SCRA 877; *Lacuesta v. Melencio-Herrera,* G.R. No. 33646, January 28, 1975, 62 SCRA 115; *Lianga Bay Logging Co., Inc. v. Lopez Enage,* G.R. No. L-30637, July 16, 1987, 152 SCRA 80.

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to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. [Article VIII, Sec. 1, par. 2.]

In the instant case, petitioner contends that public respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the contested restaurant license despite the failure of Guillermo Roxas and/or MJBFS to satisfy the conditions mandated by the "Rules and Regulations governing the Business and Operations of All *Resorts* in the Philippines," such as, the submission of a contract of lease or written permit from the petitioner as resort and restaurant owner allowing MJBFS to operate the subject restaurant. Petitioner further contends that pursuant to Section 21, Chapter IV of the rules and regulations on resorts,[6] Valley Resort Corporation as lessee and holder of the license to operate the resort must be deemed licensed to operate the subject restaurant [*Rollo*, G.R. No. 78615, pp. 11-14.]

Public respondents, on the other hand, argue that no grave abuse of discretion was committed by them because under the "Rules and Regulations Governing the Business and Operation of all *Restaurants* in the Philippines," MJBFS was not required to submit a contract of lease or written permit from petitioner, the restaurant owner, allowing the former to operate the latter's restaurant. Moreover, they contend that the issuance of the license in favor of MJBFS was predicated on the favorable recommendation of a DOT Team of Inspectors[7] that evaluated MJBFS' application and inspected the premises of the subject restaurant in accordance with Section 8, Chapter IV of the rules and regulations on restaurants. Public respondents likewise contend that Section 21, Chapter IV of the rules and regulations

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[6] Sec. 21. *Registration and licensing of other services offered by a resort.* — The registration and licensing of the resort shall include automatically all facilities and services in the resort, provided that such facilities and services are owned and operated by the resort itself.

[7] It must be noted that the DOT Team of Inspectors merely evaluates the condition of the restaurant and its immediate premises for the purpose of determining the classification and accreditation.

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on resorts was inapplicable because Valley Resort Corporation does not "own and operate" the subject restaurant, therefore it cannot be deemed licensed to operate the same by virtue of its resort license alone. And inasmuch as no previous license had been issued to petitioner or Valley Resort Corporation to operate the subject restaurant, and in fact no party was operating the restaurant pending the approval of the application of Guillermo Roxas and/or MJBFS, no grave abuse of discretion attended the issuance of a restaurant license in favor of the latter [*Id.* at pp. 248-258.]

The Court, after a careful study of the various pleadings submitted by the parties, and the DOT rules and regulations governing the operation of restaurants and resorts in the country, holds that public respondents acted arbitrarily and capriciously and, therefore, with grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of the restaurant license in favor of MJBFS.

Although the premises of public respondents' arguments cannot be disputed, the conclusion drawn therefrom is misplaced in view of the fact that public respondents undeniably had knowledge prior to the issuance of the license to Guillermo Roxas and/or MJBFS that the subject restaurant was owned by petitioner and presently leased to Valley Resort Corporation, and that Guillermo Roxas and/or MJBFS' right to possess and operate the restaurant was the subject of a pending litigation.

As far back as 1983, the MOT records show that the department was aware of the controversy between petitioner and Guillermo Roxas, *et al.*, who were then doing business under the name HVABR, regarding the restaurant and liquor concession at the resort. In fact, the MOT resolutions promulgated on July 28, 1983 and November 3, 1983 in MOT Appealed Case #83-1 precisely addressed petitioner's charge impugning the alleged right of Guillermo Roxas, *et al.* to operate its resort restaurant, the subject restaurant in this case. The judgment rendered by the RTC in Civil Case No. SP-1920 finding that Guillermo Roxas, *et al.* had no contractual right to operate the restaurant and liquor concession in the resort was noted by the

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department in that MOT case. Moreover, the Director of the Bureau of Tourism Services was ordered not to issue in favor of HVABR a provisional authority to operate the subject restaurant on the finding that it had no contractual right to manage and/or operate the same [*See* MOT Resolution and MOT Order promulgated on July 28, 1983 and August 3, 1983, respectively, in MOT Appealed Case No. 83-1, *Rollo*, G.R. No. 67195, pp. 144-155, 202-205; MOT Resolution on the Motion for Reconsideration promulgated on November 3, 1983, *Id.* at pp. 277-300.].

On September 4, 1985, the MOT, after appropriate proceedings, duly approved the ten-year contract of lease between petitioner and Valley Resort Corporation, whereby the latter, as LESSEE, was granted not only the exclusive right to possess, enjoy and use the Hidden Valley Springs resort, and all its equipment, vehicles, facilities and structures, *including the subject restaurant*, but also "the right and privilege to make use of the license and registration rights of the LESSOR over the resort . . . and, in addition, the LESSEE shall have the exclusive right, during the period that the lease is in full force and effect, to make use of the tradename and tradestyle 'HIDDEN VALLEY SPRINGS RESORT' . . . [*Rollo*, G.R. No. 78618, p. 95.] Subsequently, Valley Resort Corporation was issued a license to operate the Hidden Valley Springs resort by the MOT effective until July 31, 1987. Incidentally, in that same contract was included a provision regarding the civil cases between petitioner and Guillermo Roxas, *et al.*, pending before the IAC and Supreme Court concerning the rights of the parties to operate the subject restaurant covered by the lease, to the effect that petitioner warranted that it would continue to pursue with vigor the pending cases and other cases relative thereto, and that for the duration in which Valley Resort Corporation would be unable to utilize the restaurant, rental payment would be reduced by 50% [*Id.* at pp. 96-97.]

Then, even prior to the release of MJBFS' license to operate the restaurant on March 26, 1987, the DOT received petitioner's letter dated March 9, 1987 opposing the issuance of that license and reminded the DOT that, *inter alia*, the issue of whether or not Guillermo Roxas, *et al.*, had the right to operate petitioner's

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restaurant was still pending resolution before the courts and that the subject restaurant was covered by the MOT-approved contract of lease between petitioner and Valley Resort Corporation. Petitioner reiterated its grounds for opposition in its letters dated March 27, 1987, April 28, 1987 and May 28, 1987 to public respondent Secretary.

Public respondents make much of the fact that petitioner's letters objecting to the application for a MJBFS restaurant license were not under oath as required under Section 17 of Chapter IV of the rules and regulations on restaurants.[8] The Court holds that this defect was not fatal to the cause of petitioner for the simple reason that the essential facts upon which petitioner's opposition was based were readily apparent from DOT registration and licensing department records.

Moreover, by virtue of the approval by the MOT of the above-mentioned contract of lease and the subsequent issuance of a resort license in favor of Valley Resort Corporation, the department had acknowledged the right of Valley Resort Corporation to operate the resort business and to possess, use and enjoy all the resort facilities, including the subject restaurant, which under department records has always been considered a facility of the Hidden Valley Springs Resort and a part of the resort business [*Rollo*, G.R. No. 67195, p. 152; *Rollo*, G.R. No. 78618, pp. 93-103.] Under the above circumstances, the party entitled to a DOT license to operate the subject restaurant is either Valley Resort Corporation, as lessee, or any other party clearly authorized by petitioner, as restaurant owner, to possess and use the same.

In fine, the Court holds that it was an arbitrary and capricious exercise of discretion on the part of public respondents to have issued, and thereafter to have refused to revoke, the restaurant

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[8] Section 17. *Objection to Application for Registration and Licensing of Premises.* — Any person may file a written objection to the issuance of a certificate of registration and license to an applicant. The objection shall state the facts upon which it is based and shall be sworn to before a person authorized to administer oath.

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license in favor of Guillermo Roxas and/or MJBFS knowing that: (1) the latter was not the owner of the restaurant for which the license was sought; (2) the latter's right to possess the same was being disputed by no less than petitioner as restaurant owner; and, (3) the subject restaurant was already leased to Valley Resort Corporation pursuant to a contract of lease approved by the department.

Public respondents' action, which contravenes the acceptable standards of justice and reason, is indicative of grave abuse of discretion amounting to lack or excess of jurisdiction.

G.R. Nos. 78619-78620

Petitioner HEVR prays for the nullification of the RTC Orders of April 29, 1987 and May 8, 1987 denying its prayer for the issuance of a writ of preliminary injunction against Guillermo Roxas, enjoining the latter from using and enjoying the mayor's permit to operate the restaurant of the Hidden Valley Springs Resort. Petitioner alleges grave abuse of discretion amounting to lack of jurisdiction on the part of respondent judge, on the main premise that his Orders allowed private respondent to operate the subject restaurant in violation of the restraining order issued by this Court on May 16, 1984 in G.R. No. 67195.

The denial of petitioner's prayer for the issuance of the writ was predicated on the failure of petitioner to establish a present and clear right to operate the subject restaurant, since the issue as to who among the parties had a better right to operate the restaurant is still being litigated in the IAC [RTC Order of April 29, 1987; *Rollo*, G.R. No. 78619-78620, pp. 29-31.] Furthermore, the denial was held not to be in violation of the Supreme Court's restraining order issued in G.R. No. 67195, since such order neither expressly prohibited Guillermo Roxas from operating the restaurant nor gave the petitioner a right to operate the restaurant [RTC Order of May 8, 1987, *Id.* at pp. 32-34.]

The Court does not find merit in the instant petition.

Whether or not a writ of injunction will issue lies exclusively within the discretion of respondent judge, and this Court will

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not interfere with the exercise of respondent judge's discretion unless there is a showing of grave abuse [*North Negros Sugar Co. v. Hidalgo*, 63 Phil. 664 (1936); *Rodulfa v. Alfonsol,* 76 Phil. 225 (1946); *Yaptinchay v. Torres,* G.R. No. L-26462, June 9, 1969, 28 SCRA 489.]

In the instant case, there is no indication that respondent judge acted with manifest abuse of his discretion in denying the issuance of the writ that would compel this Court to set aside his orders. Firstly, petitioner herein failed to establish a clear and present right justifying the issuance of a writ of preliminary injunction considering that its right to operate the subject restaurant to the exclusion of private respondent is still under litigation in AC-G.R. CV No. 00764. Secondly, at the inception of the action below, private respondent was a holder of a DOT license and a mayor's permit to operate the restaurant which were regular on their face.

The Court's conclusion is not necessarily in conflict with that in G.R. No. 67195. Although both cases involve the issuance of a writ of preliminary injunction, in G.R. No. 67195 the Court declared that the writ of preliminary injunction cannot issue to protect the illegal restaurant business of private respondents in view of the fact that the latter was not then licensed by the MOT to operate the subject restaurant. The Court did not in any way attempt to resolve the issue of who among the parties had the right to operate the subject restaurant.

Furthermore, this Court finds that the assailed RTC Orders did not violate its May 16, 1984 restraining order enjoining the IAC from enforcing and carrying out the October 3, 1984 and April 4, 1984 resolutions and its writ of preliminary injunction.

Petitioner claims that the implication of this restraining order was to prohibit private respondent from operating the subject restaurant and to affirm the right of petitioner to operate the restaurant, pending resolution of G.R. No. 67195.

This contention is unsound.

The October 3, 1984 and April 4, 1984 IAC resolutions and its writ of preliminary injunction responded to private respondents'

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prayer to *enjoin petitioner from closing the restaurant,* disturbing the *status quo* and frustrating, impeding, obstructing, disturbing or interfering with private respondent's right to operate the restaurant and liquor concession.

Consequently, this Court's restraining order had the effect of staying the writ of preliminary injunction and permitting petitioner to *close the resort* over and above the protests of private respondent. It did not *ipso facto* create and affirm a right on the part of petitioner to *operate the restaurant.*

In addition, considering the thrust of the above holding, it is appropriate at this point to declare petitioner's motion to cite private respondent in contempt filed in G.R. No. 67195, charging as contumacious the act of private respondent in applying for a restaurant license with the DOT under the business name MJBFS (in order to operate the subject resort restaurant as MJB Restaurant), without merit.

"Well-settled is the rule that an act to be considered contemptuous must be clearly contrary or prohibited by the order of the Court. `A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required'" [*Cua v. Lecaros*, G.R. No. 71909, May 24, 1988, citing *Anglo-Fil Trading Corporation v. Lazaro*, G.R. No. 54958, September 2, 1983, 124 SCRA 494, 525.] Once again it must be noted that this Court's restraining order of May 16, 1984 was addressed to the IAC and had the effect of staying the writ of preliminary injunction issued by the latter. The only clear import of the restraining order was to allow petitioner as resort owner to close the resort. It did not prohibit private respondent from applying for a restaurant license with the DOT.

However, the Court, in upholding the assailed orders of respondent judge herein, does not in any way purport to declare that private respondent has a clear and established right to operate the subject restaurant, and that he can, in fact, operate the same to the exclusion of the petitioner. It must be stressed

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that the issue of who among the parties has the right to operate the restaurant is still pending resolution before the Court of Appeals in the Civil Case AC-G.R. CV No. 00764.

WHEREFORE, the Court rules:

(1) In G.R. No. 67195, the October 3, 1983 Resolution of the IAC is SET ASIDE. The April 4, 1984 Resolution of the IAC is AFFIRMED insofar as it denies petitioners' motion to dismiss the appeal; but REVERSED insofar as it denies petitioners' motion for reconsideration of the October 3, 1983 Resolution seeking to set aside the writ of preliminary injunction issued by the IAC.

In view of the Court's decision in G.R. Nos. 78619-78620, the motion to cite Guillermo Roxas in contempt of court is DENIED.

The temporary restraining order issued by this Court on May 16, 1984, whereby the IAC was restrained from enforcing and/or carrying out its resolutions dated October 3, 1983 and April 4, 1984, and its writ of preliminary injunction, shall remain in force and effect pending the resolution of Civil Case AC-G.R. CV No. 00764.

(2) The petition in G.R. No. 78618 is GRANTED. The license to operate the subject restaurant in the Hidden Valley Springs Resort issued by the DOT in favor of MJB Food and Services (or Guillermo Roxas) is NULLIFIED.

The temporary restraining order issued by this Court on June 22, 1987, whereby public respondents were restrained from further granting a similar license to respondent Guillermo Roxas under any business name he may use to apply therefor, shall remain in force and effect pending the final resolution of Civil Case AC-G.R. CV No. 00764.

(3) The petition for *certiorari* and prohibition in G.R. Nos. 78619-78620 is DISMISSED for lack of merit.

The temporary restraining order issued by this Court on June 23, 1987 is hereby SET ASIDE.

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SO ORDERED.

Fernan, C. J., Gutierrez, Jr., and *Feliciano, JJ.,* concur.

Bidin, J., no part, having participated in the assailed resolutions as a member of respondent court.

THIRD DIVISION

[G.R. No. 76048. May 29, 1989]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BONIFACIO PIGON,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MOTIVE TO DELIBERATELY AND FALSELY ACCUSE A FIRST COUSIN OF A GRIEVOUS CRIME, BELIED IN CASE AT BAR. — It will be noted that Bonifacio Pigon and Jaime Deogrades are first cousins; Jaime's mother is the sister of Bonifacio's father. Considering this close relationship by blood, the Court finds it difficult to believe that Jaime would deliberately and falsely accuse his first cousin of crimes as grievous as homicide and robbery, for which the law imposes life imprisonment, simply to get even with Bonifacio for the slapping that Bonifacio had supposedly administered to him some three (3) years before the trial. Moreover, appellant Pigon himself had testified that on the day prior to the killing and robbery, he was at Jaime's house chatting casually and to all appearances amiably with Jaime, and that Jaime had willingly gone with Bonifacio and Leonito Samson to Catigao-tigawan the next day. There was, in other words, no indication that Jaime had all the time been harboring a deep and deadly resentment against Bonifacio.

2. ID.; ID.; ID.; FAILURE TO HELP THE VICTIM DUE TO SHOCK AND FEAR DOES NOT AFFECT CREDIBILITY. — The defense