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SECOND DIVISION

[G.R. No. L-44126. February 28, 1977]

MANILA ADJUSTERS & SURVEYORS COMPANY, *petitioner, vs.* **Hon. JUAN BOCAR of the Court of First Instance of Manila, NG YEK KIONG and ERNESTO COKAI,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; WRIT OF PRELIMINARY INJUNCTION IS PROPER ONLY WHEN THE PLAINTIFF APPEARS TO BE ENTITLED TO THE RELIEF DEMANDED IN HIS COMPLAINT.— On the basis of the foregoing undisputed setting, We hold that the subject writ of preliminary injunction has no legal leg to stand on. On the face of their own complaint, it is evident that plaintiffs have neither contractual nor any kind of relation with petitioner. The petitioner's contract with the Facoma is a separate and independent relationship from the agreement between the Facoma and said plaintiffs, herein respondents Ng and Cokai. Whatever fraud might have attended the latter agreement because of misrepresentations of Pintor to said respondents cannot affect the right of petitioner to the proceeds of the letter credit, there being no allegation whatsoever linking petitioner to Pintor. It is thus clear that the complaint below states no cause of action against the petitioner. Nor is there any basis for enjoining the Bank from honoring the letter of credit, absent any showing that Pintor's alleged fraudulent representations in obtaining that assistance of Ng and Cokai were made on behalf of or with the knowledge of the Bank. Under Sections 3 and 4 of Rule 58, a preliminary injunction is proper only when the plaintiff appears to be entitled to the relief demanded in his complaint. Such is not the case here.

APPEARANCES OF COUNSEL

Ferry, De la Rosa, Deligero, Salonga & Associates for petitioner.

Joaquin C. Chung, Jr. for respondents.

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DECISION

BARREDO, *J.*:

Petition for *certiorari* and prohibition to annul the writ of preliminary injunction issued by respondent judge and to order said respondent to refrain from enjoining petitioner from proceeding against the letter of credit for ₱1 M issued in its favor by the Insular Bank of Asia and America, the writ in question having been issued in Civil Case No. 99661 of the Court of First Instance of Manila entitled *Ng Yek Kiong and Ernesto Cokai vs. Insular Bank of Asia and America, Manila Adjusters & Surveyors Company and Mariano Pintor, etc.*, on February 18, 1976.

In the complaint of private respondents filed in the court below, it is alleged that herein petitioner entered into a contract of sale of fertilizer with the defendant Ilocos Sur Facoma, represented by its President, the other defendant Mariano Pintor, and to guarantee faithful performance on the part of said Facoma, a letter of credit was opened with the Insular Bank of Asia and America for ₱1M in favor of petitioner. To secure the issuance of such letter of credit, Pintor made arrangements with herein other respondents Ng Yek Kiong and Ernesto Cokai, by virtue of which, said respondents bound some of their properties to the Bank, such that in case of non-compliance on the part of the Facoma with the contract of sale, the ₱1M would be subject to forfeiture and respondents Ng and Cokai would answer with their properties to the Bank. It is also alleged that as the Facoma had defaulted in the performance of its obligation to petitioner, the latter is proceeding against the ₱1M letter of credit, hence the complaint with motion for preliminary injunction which respondent judge has granted, to enjoin the Bank from honoring the letter of credit and petitioner from collecting the proceeds thereof. The cause of action alleged is that Ng and Cokai, the plaintiffs, bound themselves with their properties to guarantee the ₱1M letter of credit only because of the fraudulent representations made to them by Pintor. Significantly, said plaintiffs do not appear to be parties to the contract of sale

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between petitioner and the Facoma. In other words, the Facoma contracted with petitioner upon the security of the letter of credit issued by the Bank, and plaintiffs in turn bound themselves to the Bank on behalf of the Facoma.

On the basis of the foregoing undisputed setting, We hold that the subject writ of preliminary injunction has no legal leg to stand on. On the face of their own complaint, it is evident that plaintiffs have neither contractual nor any kind of relation with petitioner. The petitioner's contract with the Facoma is a separate and independent relationship from the agreement between the Facoma and said plaintiffs, herein respondents Ng and Cokai. Whatever fraud might have attended the latter agreement because of misrepresentations of Pintor to said respondents cannot affect the right of petitioner to the proceeds of the letter credit, there being no allegation whatsoever linking petitioner to Pintor. It is thus clear that the complaint below states no cause of action against the petitioner. Nor is there any basis for enjoining the Bank from honoring the letter of credit, absent any showing that Pintor's alleged fraudulent representations in obtaining that assistance of Ng and Cokai were made on behalf of or with the knowledge of then Bank. Under Sections 3 and 4 of Rule 58, a preliminary injunction is proper only when the plaintiff appears to be entitled to the relief demanded in his complaint. Such is not the case here.

WHEREFORE, the petition is granted, the order of respondent judge dated February 18, 1976 is hereby set aside, with costs against private respondents.

Fernando (Chairman), Antonio, Aquino, and *Concepcion Jr., JJ.*, concur.