

**Attachment “1”**

**The 22 May 2006 Preliminary Injunction Issued Against Secs. 302.3 & 302.4 of the 2004 Revised Implementing Rules and Regulations (R-IRR) of the 1977 National Building Code of the Philippines (NBCP)**

**REPUBLIC OF THE PHILIPPINES  
REGIONAL TRIAL COURT  
National Capital Region  
Branch 22, Manila**

**PHILIPPINE INSTITUTE OF CIVIL  
ENGINEERS, INC. and  
LEO CLETO GAMOLO,**

Plaintiffs,

- versus -

Civil Case No. **05-112502**

**THE HON. HERMOGENES  
EBDANE, JR. in his capacity as  
Secretary of Public Works and  
Highways,**

Defendant

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**ORDER**

**I**

This resolves **plaintiffs’ application for the issuance of a writ of preliminary injunction.**

The instant complaint seeks to enjoin defendant from enforcing the published **October 29, 2004 Implementing rules and Regulations (IRR) of the National Building Code of the Philippines (PD 1096)**, insofar as it bars civil engineers, like herein petitioners, from exercising the right to prepare, **sign and seal plans and specifications** (Section 302 [3] and [4]), and to declare the said prohibitory provision null and void for being **contrary to existing laws** (PD 1096 and RA 544) and the constitution.

**II**

**This Court, after due hearing, granted plaintiffs’ application for temporary restraining (order)<sup>1</sup> and set the hearing for the issuance of a writ of preliminary injunction, at which hearing, petitioners manifested, after**

defendant through counsel admitted that the issues involve(d) in the instant case are purely legal, that they will just file their reply to the opposition. Thereafter, the application, by agreement of contending counsel, will be considered submitted for resolution. Plaintiffs filed their reply on May 20, 2005.

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<sup>1</sup> Extending the May 3, 2005 72-hour temporary restraining order issued by the Hon. Executive Judge.

### III

After a thorough and circumspect examination of the pleadings filed by the parties as well as their arguments and admissions at the hearing of the instant application, **the Court opines and so holds that the essential requisites for the issuance of the writ of preliminary injunction, as prayed for by the plaintiffs, are present in this case.**

There is no dispute that **Republic Act No. 544 otherwise known as the “Civil Engineering Law”** allows civil engineers to **prepare plans, specifications, estimates** (which the subject IRR does not allow). Section 2 thereof provides that the practice of civil engineering within the meaning and intent of this Act shall embrace services x x x **preparation of plans, specifications, estimates**, x x x (emphasis supplied)

**Presidential Decree No. 1096 (PD 1096) otherwise known as the National Building Code**, under Section 302 thereof, also provides that “ x x x [T]o be submitted together with such application are at least five sets of corresponding plans and specifications prepared, signed and sealed by a duly licensed **architect or civil engineer** in case of architectural and structural plans x x x” (emphasis supplied)

Likewise, **Ministry Order No. 57, promulgated as part of the old implementing rules and regulations in 1978 by then Ministry of Public Works, Transportation and Communication of P.D. 1096**, provides in its section 3.2 that “ x x x Plans and specifications prepared, signed and sealed by a **duly licensed architect or civil engineer** in case of architectural and structural plans. x x x.” (emphasis supplied)

In the case of **Arcega vs. Court of Appeals, 275 SCRA 176 (1997)**, the Honorable Supreme Court declared that “[F]or the issuance of the writ of preliminary injunction to be proper, it must be shown that the **invasion of the right sought** to be protected is material and substantial; that the **right of applicant** is clear and unmistakable and that there is urgent and paramount necessity for the writ to prevent serious damage.

Both the petitioner and respondent are one that one cannot be deprived of the **right to work** and the **right to make a living** because these rights are property rights. It is not disputed that prior to the issuance of the questioned IRR, petitioners, as civil engineers, **were exercising the subject rights pursuant to R.A. 544 and P.D. 1096 as well as Ministry Order 57** which the subject IRR

would now remove from them. It is a legal truism that “the spring cannot rise higher than its source”. **At this stage of the proceedings**, it would appear that the **new IRR goes beyond the laws it seeks to implement**.

**WHEREFORE, the application is granted, and let a writ of preliminary injunction issue, upon posting by plaintiff of an injunction bond in the amount of P100,000.00 and approval thereof by the Court, enjoining the herein defendant, his agents, representatives, and/or assigns from implementing and carrying out the questioned provisions of the subject October 29, 2004 Rules and Regulations issued by the defendant affecting the herein plaintiffs.**

**SO ORDERED.**

**May 24, 2005.**

***ORIGINAL SIGNED***  
**MARIANO M. DELA CRUZ, JR.**  
**Presiding Judge**

Copy furnished:

1. Office of the Solicitor General
2. Hon. Hermogenes Ebdane, Jr.
3. Philippine Institute of Civil Engineers, Inc.
4. Leo Cleto Gamolo

*Attachment “1.1” follows.*