

*Writ of Preliminary Injunction Secured by Civil Engineers in May 2005
Against Sections 302.3 & 302.4 of the 2004 Revised IRR of P.D. No. 1096
(The National Building Code of the Philippines).*

**REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
National Capital Judicial 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.

x x

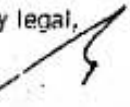
O R D E R

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 Regulation (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 (P.D 1096 and R.A.544) and the constitution.

II

This Court, after due hearing, granted plaintiffs' application for temporary restraining¹ and set the hearing for the issuance of a writ of preliminary injunction, at which hearing, petitioners manifested, after defendant thru counsel admitted that the issues involve in the instant case are purely legal,



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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.

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 regulation 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 can be 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

¹ Extending the May 3, 2005 72-line temporary restraining order issued by the Hon. Executive Judge.

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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 an urgent and paramount necessity for the writ to prevent serious damage.

Both the petitioner and respondent are one that one can not 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 the 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 Regulation issued by the defendant affecting the herein plaintiffs.

SO ORDERED.

May 24, 2005.


MARINO M. DELA CRUZ, JR.
Presiding Judge

Copy furnished:

1. Office of the Solicitor General
2. Hon. Hermogenes Ebdane, Jr.
3. Phil. Institute of Civil Engrs., Inc.
4. Leo Cleto Gamalo