



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BP PHILIPPINES, INC.
(FORMERLY BURMAH
CASTROL PHILIPPINES,
INC.),

Petitioner,

- versus -

G.R. No. 175284

Present

SERENO, C.J.

Chairperson,

CAPIO,

LEONARDO DE CASTRO,

PEPEZ, and

REYES, JJ.

CLARK TRADING
CORPORATION,

Respondent.

Promulgated:

19 SEP 2012

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DECISION

LEONARDO-DE CASTRO, J.:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Court of Appeals' Decision¹ dated August 3, 2006 and Resolution² dated October 30, 2006 in CA-G.R. CV No. 79616, entitled

¹ Per Raffle dated September 5, 2012.

² *Rollo*, pp. 76-108; penned by Associate Justice Celia C. Tibra-Langono with Associate Justices Lucas P. Bersamin and Martin S. Villarama, Jr. (both now members of the Supreme Court) concurring.

Id. at 110-111.

Burmah Castrol Philippines, Inc. v. Clark Trading Corporation, which affirmed the Decision³ dated December 15, 2002 of the Regional Trial Court (RTC), Branch 57, Angeles City in **Civil Case No. 9301**.

BP Philippines, Inc. (petitioner), a corporation “engaged in the development, manufacture, importation, distribution, marketing, and wholesale of: (i) the products of the BURMAH CASTROL GROUP, including, x x x the CASTROL range of lubricants and associated products x x x,”⁴ filed a Complaint⁵ for “injunction with prayer for preliminary injunction and temporary restraining order (TRO) and damages” in the RTC against respondent Clark Trading Corporation, owner of Parkson Duty Free, which, in turn, is a duty free retailer operating inside the Clark Special Economic Zone (CSEZ). Parkson Duty Free sells, among others, imported duty-free Castrol products not sourced from petitioner.

Petitioner alleged that sometime in 1994 it had entered into a Marketing and Technical Assistance Licensing Agreement⁶ and a Marketing and Distribution Agreement⁷ (agreements) with Castrol Limited, U.K., a corporation organized under the laws of England, and the owner and manufacturer of Castrol products. Essentially, under the terms of the agreements,⁸ Castrol Limited, U.K. granted petitioner the title “exclusive wholesaler importer and exclusive distributor” of Castrol products in the territory of the Philippines.⁹ Under the July 22, 1998 Variation “territory” was further clarified to include duty-free areas.¹⁰

³ Id. at 112-124; penned by Judge Omar T. Viola.

⁴ Id. at 45-74; Certificate of Filing of Amended Articles of Incorporation.

⁵ Id. at 125-132; filed on February 8, 1999.

⁶ Id. at 133-149.

⁷ Id. at 150-170.

⁸ Id. at 367 and 383; Agreements were amended twice over the years: March 24, 1995 and July 22, 1998.

⁹ Id. at 369; Art. 1.1(f) “Territory” means the territory of the Philippines.

¹⁰ Id. at 384; Art. 1(f), as amended by the Variation effective 22 July 1998, defines “territory” as “the territory of the Philippines and for the avoidance of doubt, including all duty free zones within and outside any special economic zones.”

Petitioner claimed that respondent, by selling and distributing Castrol products¹¹ not sourced from petitioner in the Philippines, violated petitioner's exclusive rights under the agreements. Despite a cease and desist letter¹² dated September 14, 1998 sent by petitioner, respondent continued to distribute and sell Castrol products in its duty-free shop. Petitioner, citing *Yu v. Court of Appeals*¹³ as basis for its claim, contended that the unauthorized distribution and sale of Castrol products by respondent "will cause grave and irreparable damage to its goodwill and reputation."

To support the application for TRO, petitioner presented the testimony of a certain Farley¹⁴ Cuizon, one of the people who conducted a test-buy on October 30, 1998 at Parkson Duty Free.¹⁵ Cuizon testified that he had purchased one box containing twelve (12) bottles with red caps of Castrol GTX motor oil, and that these red caps signified that the Castrol motor oil did not come from petitioner, since the bottles of Castrol motor oil petitioner sold had white caps. Moreover, Cuizon further testified that the bottles of Castrol motor oil bought from Parkson Duty Free had on them printed labels stating that these "may not be resold outside North America."¹⁶ However, on cross-examination, he testified that no patent violation existed since the red caps on the Castrol GTX products were not significant.

On March 4, 1999, the RTC issued an Order directing the issuance of a TRO for a period of twenty (20) days enjoining respondent "from selling and distributing Castrol products until further orders x x x."¹⁷

¹¹ Id. at 154; Art. 1(e) of the Marketing and Distribution Agreement defines Castrol "Products" as "all Castrol branded products."

¹² Id. at 346-347; Letter was served on September 15, 1998.

¹³ G.R. No. 86683, January 21, 1993, 217 SCRA 328.

¹⁴ "FERLEY" in some parts of the *rollo*.

¹⁵ TSN, February 26, 1999, pp. 13-27.

¹⁶ Id. at 15 and *rollo*, p. 194.

¹⁷ *Rollo*, pp. 248-249.

On April 15, 1999, the RTC denied petitioner's prayer for the issuance of a writ of preliminary injunction, there being no sufficient justification for the relief.¹⁸

Respondent, in its answer,¹⁹ stated that petitioner had no cause of action. Respondent alleged that it was a stranger to the agreements, it being neither a party nor a signatory thereto. Based on the theory that only parties to a contract were bound by it, respondent claimed that it could not be held liable for violations of the terms of the agreements. While respondent admitted that it distributed and sold Castrol products, it also posited that it only conducted its business within the confines of the CSEZ in accordance with Executive Order Nos. 140,²⁰ 250²¹ and 250-A.²² Since petitioner was not authorized to operate, distribute and sell within the CSEZ, respondent did not violate the agreements because its efficacy only covers an area where petitioner is allowed by law to distribute.

After trial on the merits, the RTC dismissed the complaint. It ruled that the factual circumstances of the *Yu* case were different from the present case since respondent was operating a duty-free shop inside the CSEZ. It noted that "the Castrol products sold by [respondent] therefore [was] legal provided that they only [sold] the same in their store inside Clark and to customers allowed to make said purchase and for their consumption."²³ With regard to the propriety of the issuance of a preliminary injunction, the RTC ruled:

¹⁸ Records, pp. 151-154.

¹⁹ Id. at 91-95.

²⁰ *Rationalizing The Duty Free Stores/Outlets And Their Operations In The Philippines And For Other Purposes*.

²¹ *Implementing The Rationalization Of Duty Free Stores/Outlets And Their Operations In The Philippines Pursuant To Executive Order No. 140 And For Other Purposes*.

²² *Amending Executive Order No. 250 Dated 2 June 1995 Implementing The Rationalization Of Duty Free Stores/Outlets And Their Operations In The Philippines Pursuant To EO 140 And For Other Purposes*.

²³ *Rollo*, pp. 121-122.

[Petitioner] failed to show xxx [any] act by [respondent] [that constitutes] an injurious invasion of its rights stemming from a contract it signed with another party coupled by the limited scope of the transaction of [respondent] and its customers.

Hence, [petitioner] cannot be entitled to an injunction in the instant case. It has not shown that it has a right which must be protected by this court, and it failed to show also that defendant is guilty of acts which [violate] its rights.”

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WHEREFORE, premises considered, the complaint filed by [petitioner] is hereby ordered DISMISSED.²⁴

On appeal, the Court of Appeals affirmed the ruling of the RTC. Petitioner was not able to establish the existence of a clear legal right to be protected and the acts which would constitute the alleged violation of said right. The circumstances under which the *Yu* case was decided upon were different from that of the present case. The Court of Appeals pointed out the different circumstances in the following manner:

Firstly, in *Yu*, the High Court did not make a final determination of the rights and obligations of the parties in connection with the exclusive sales agency agreement of wall covering products between Philip Yu and the House of Mayfair in England. Said case reached the High Court in connection with the incident on the preliminary injunction and the main suit for injunction was still pending with the Regional Trial Court of Manila. The High Court categorically stated that their “observations” do not in the least convey the message that they “have placed the cart ahead of the horse, so to speak.” This is the reason why in the dispositive portion of said case, the High Court remanded the case to the court of origin.

In the instant case, the trial court already rendered its assailed Decision which found that [petitioner] has not shown that it has a right which must be protected and that [respondent] is not guilty of acts which violate [petitioner’s] right. Thus, We fail to see how the High Court’s “observations” in the *Yu* case should be cited as a controlling precedent by [petitioner].

Secondly, in *Yu*, it appears that Philip Yu has an exclusive sales agency agreement with the House of Mayfair in England since 1987 to

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Id. at 123-124.

promote and procure orders for Mayfair wall covering products from customers in the Philippines. Despite [the] said exclusive sales agency agreement, Yu's dealer, Unisia Merchandising Co., Inc., engaged in a sinister scheme of importing the same goods, in concert with the FNF Trading in West Germany, and misleading the House of Mayfair into believing that the wallpaper products ordered via said trading German firm were intended for shipment to Nigeria, although they were actually shipped to and sold in the Philippines.

In the case at bar, [respondent], who is a registered locator doing business at the Parkson Duty Free Shop within the [CSEZ] administered by the Clark Development Corporation, was not a dealer of [petitioner] nor was there any business dealing or transaction at all between [petitioner] and [respondent]. In fact, it was established in evidence, through the testimony of Adrian Phillimore, [petitioner]'s very own witness, that respondent was already selling imported Castrol GTX products even prior to the execution of the Variation to Marketing and Distribution Agreement dated 23 July 1998 between [petitioner] and Castrol Limited, a corporation established under the laws of England. Further, [petitioner] failed to show that [respondent's] duty free importation of said Castrol GTX products which were sold at its Parkson Duty Free Shop was a sinister scheme employed by [respondent] in order to by-pass [petitioner].

Thirdly, in Yu, the House of Mayfair of England, in its correspondence to FNF Trading of West Germany, even took the cudgels for Philip Yu in seeking compensation for the latter's loss as a consequence of the scheme of the dealer Unisia Merchandising Co., Inc., in concert with FNF Trading.

In the case at bar, [petitioner] did not allege in its Complaint nor prove who the supplier of [respondent] was with respect to said Castrol GTX products sold in Parkson Duty Free Shop. There is no showing that [respondent] sought Castrol Limited of England in order to procure Castrol GTX products for retailing inside the duty free shop of [respondent] within the Clark Special Economic Zone, with the intention of violating the purported exclusive marketing and distributorship agreement between [petitioner] and Castrol Limited of England. Neither do We find any showing that Castrol Limited of England took up the cudgels for [petitioner], by corresponding with [respondent], in connection with the latter's retailing of Castrol GTX products with red caps in its duty free shop at the Clark Special Economic Zone.

Fourthly, in Yu, the House of Mayfair in England was duped into believing that the goods ordered through FNF Trading of West Germany were to be shipped to Nigeria only, but the goods were actually sent to and sold in the Philippines. Considering this circumstance, the Supreme Court stated that "(a) ploy of this character is akin to the scenario of a third person who induces a party to renege on or violate his undertaking under a contract, thereby entitling the other contracting party to relief therefrom (Article 1314, New Civil Code)."

In the instance case, there is no evidence that any party was duped and that [respondent], who is not a privy to the marketing and distribution agreement between [petitioner] and Castrol Limited of England, employed any sinister scheme or ploy at all. We do not find any showing of a scenario whereby [respondent] induced any party to renege or violate its undertaking under said agreement, thereby entitling [petitioner] to injunctive relief and damages. Thus, [petitioner's] insistence that [respondent's] obligation to [petitioner] does not arise from contract, but from law, which protects parties to a contract from the wrongful interference of strangers, does not have any factual or legal basis.

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Considering the foregoing findings, [petitioner] is not entitled to a permanent injunction and damages. [Petitioner] failed to establish the existence of a clear legal right to be protected and the acts of [respondent] which are violative of said right. In the absence of any actual, existing, clear legal right to be protected, injunction does not lie and consequently, there is no ground for the award of damages as claimed by [petitioner].

In any event, We take note, at this juncture, that [respondent] is a registered locator operating the Parkson Duty Free Shop within the confines of the Clark Special Economic Zone. In said duty free operation, goods sold within the duty free shops are imported duty free and also resold as such.

Section 1 of Executive Order No. 250, as amended, provides:

SECTION 1. Allowable Areas for Duty Free Shop Operation. - The moratorium on the establishment of duty free stores/outlets imposed by E.O. No. 140 is hereby lifted. Accordingly, duty free stores/outlets, whether operated by the government and/or private entities, may be established within the country's international ports of entry subject to the terms and conditions set forth in E.O. No. 46, as amended, and in the secured and fenced-in areas of special economic zones/freeports pursuant to the provisions of the Bases Conversion and Development Act of 1992 (RA 7227), establishing the Subic Special Economic Zone/Freeport Zone, Clark Special Economic Zone, John Hay Special Economic Zone, Poro Point Special Economic and Freeport Zone; RA 7922 (Establishing the Sta. Ana, Cagayan Special Economic Zone and Freeport); RA 7903 (Creating the Zamboanga City Special Economic Zone and Freeport).

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WHEREFORE, premises considered, the appeal is **DENIED** for lack of merit. The Decision dated 15 December 2002 of the Regional Trial Court of Angeles City, Branch 57 in Civil Case No. 9301 is **AFFIRMED**.

Costs against [petitioner].²⁵

Petitioner moved for reconsideration but the same was denied for lack of merit.²⁶

Hence, this petition.

Petitioner reiterates that it is entitled to have its proprietary rights under the agreements protected by an injunction. It argues that the fact that respondent was operating inside the CSEZ was inconsequential since the agreements specifically covered the whole Philippines, including duty-free zones pursuant to the agreements. Moreover, petitioner claims that the Court of Appeals erred in affirming the RTC ruling that the *Yu* case does not apply. Thus, respondent's continued unauthorized, illegal and illegitimate sale of Castrol GTX motor oil has caused petitioner to suffer damages to its goodwill and business reputation and resulted to losses in business opportunities.

Respondent, for its part, argues that the case should be dismissed for lack of merit. It contends that it is not a party to the agreements and as such, under Article 1311²⁷ of the Civil Code, it cannot be bound to the contract. It also argues that the *Yu* case is inapplicable here since, unlike in that case, unfair competition as defined under Article 28²⁸ of the Civil Code is not present in the case now before us.

²⁵ Id. at 100-105.

²⁶ Id. at 110-111.

²⁷ Article 1311 of the Civil Code provides:

Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

²⁸ Article 28 of the Civil Code provides:

Art. 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damages.

The facts of this case and the allegations of the parties raise the question of whether petitioner is entitled to injunction against third-persons on the basis of its marketing and distribution agreements.

The petition is without merit.

We agree with the Court of Appeals that the *Yu* case is inapplicable to the present case. To reiterate and as pointed out by the Court of Appeals, aside from the *Yu* case being issued during the pendency of the main action for injunction, the Court made the following observation:

Another circumstance which respondent court overlooked was petitioner's suggestion, which was not disputed by herein private respondent in its comment, that the House of Mayfair in England was duped into believing that the goods ordered through the FNF Trading were to be shipped to Nigeria only, but the goods were actually sent to and sold in the Philippines. **A ploy of this character is akin to the scenario of a third person who induces a party to renege on or violate his undertaking under a contract, thereby entitling the other contracting party to relief therefrom (Article 1314, New Civil Code).** The breach caused by private respondent was even aggravated by the consequent diversion of trade from the business of petitioner to that of private respondent caused by the latter's species of unfair competition as demonstrated no less by the sales effected inspite of this Court's restraining order. This brings Us to the irreparable mischief which respondent court misappreciated when it refused to grant the relief simply because of the observation that petitioner can be fully compensated for the damage. x x x.²⁹ (Emphasis supplied.)

This badge of "irreparable mischief" as observed by the Court caused the *Yu* case to be remanded for the issuance of a preliminary injunction.

In contrast, the present case deals with the main action for injunction. In *Bacolod City Water District v. Labayen*,³⁰ we have discussed the nature of an action for injunction, to wit:

²⁹ *Yu v. Court of Appeals*, supra note 13 at 332.

³⁰ 487 Phil. 335, 346-347 (2004).

Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action.

The **main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction** which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the *status quo* until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction. (Emphasis supplied, citations omitted.)

In the present case, neither the RTC nor the Court of Appeals found any nefarious scheme by respondent to induce either party to circumvent, renege on or violate its undertaking under the marketing and distribution agreements. We note that no allegation was made on the authenticity of the Castrol GTX products sold by respondent. Thus, there is nothing in this case that shows a ploy of the character described in the *Yu* case, so this is clearly distinguishable from that case.

As we have already stated, the writ of injunction would issue:

[U]pon the satisfaction of two requisites, namely: (1) the existence of a right to be protected; and (2) acts which are violative of said right. In the absence of a clear legal right, the issuance of the injunctive relief constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. Where the complainant's right is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction.³¹

Respondent not being able to prove and establish the existence of a clear and actual right that ought to be protected, injunction cannot issue as a

³¹ *Manila International Airport Authority v. Rivera Village Lessee Homeowners Association Incorporated*, 508 Phil. 354, 375 (2005).

matter of course. Consequently, the Court does not find any ground for the award of damages.


WHEREFORE, the petition is **DENIED**. The Court of Appeals Decision in CA-G.R. CV No. /9616 is hereby **AFFIRMED**.

Costs against petitioner.

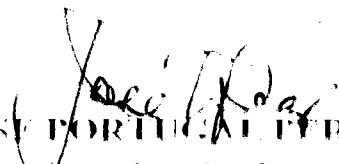
SO ORDERED.


TERESITA L. LEONARDO DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


ANTONIO T. CARPIO
Associate Justice


JOSE FORTUON PEREZ
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice