

HON. ENRICO PALOMAR, PETITIONER-APPELLANT, VS. COURT OF FIRST INSTANCE OF MANILA, BRANCH XIV AND PHILIPPINE REFINING CO., INC., RESPONDENTS-APPELLEES.

G.R. No. L-29881. August 31, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review seeking to set aside the decision of the then Court of First Instance of Manila[*], Branch XIV, dated November 14, 1968, in Civil Case No. 74538, holding that "Fraud Order No. 2" issued by the petitioner is void, and permanently; enjoining the petitioner from enforcing and implementing said fraud order.

The factual background of this case is as follows:

Sometime, in August 1968, the private respondent started a sales promotion scheme designated as "Grand Slam" for its "Breeze", "Rinso", "Lifebuoy" and "Lux" products wherein any person who submits to it matching left and right halves of pictures of any article wins that article as his prize. Half-pictures were found in the labels of the products promoted. In the advertisements for said scheme which were published in newspapers, it was also announced that free half-photos of prizes might also be obtained by writing to J. Cunanan & Co., Inc., P.O. Box 2288, Manila. Only one free half-photo was given for every request which should be accompanied with a self-addressed stamped envelope. The prizes were P1.00, P10.00, transistor radios, wrist watches, sewing machines, TV sets, refrigerators and Volkswagen 1200. (Rollo, p. 44-45; Petitioner's Briefs, p. 4).

On October 7, 1968, the petitioner in his official capacity as Postmaster General, issued "Fraud Order No. 2" against the private respondent declaring the latter's "Grand Slam" promotion to be a lottery within the purview of the Postal Law and directed all postmasters and employees of the Bureau of Posts to return to the sender any mail matter mailed by or addressed to the private respondent and J. Cunanan & Co., Inc. or any of their agents or representatives, with the notation "Fraudulent" plainly written or stamped on the cover of such matter. (Rollo, p. 40).

On October 15, 1968, private respondent filed a complaint for mandatory injunction with preliminary mandatory injunction against the petitioner before the Court of First instance of Manila, alleging that in the promotional scheme of "Grand Slam", there was no consideration involved, hence it was not a lottery, and that "Fraud Order No. 2" was improper, and praying that petitioner be enjoined from implementing the said order. (Rollo, p. 44-48).

On October 16, 1968, the respondent Court of First Instance issued an Order allowing a writ of preliminary injunction, upon the filing of a bond in the sum of P1,000.00, and ordered the petitioner, his agent, or representative to desist and refrain from enforcing or implementing "Fraud Order No. 2" (Rollo, p. 49).

On October 17, 1968, the petitioner submitted his answer to the complaint with a prayer to lift the writ of preliminary prohibitory injunction and opposition to application for a writ of preliminary mandatory injunction. (Rollo, pp. 50-57).

After due hearing, on November 14, 1968, the trial court rendered its judgment holding, among others, that private respondent's promotional scheme known as "Grand Slam" was not a lottery as the element of consideration was lacking. (Rollo, pp. 58-61).

On November 20, 1968, the petitioner, through the Solicitor General filed a notice of appeal, (Rollo, p. 2), and the Original Record of aforesaid case was forwarded to this Court by the lower Court. (Rollo, p. 1).

It appearing that the appeal was perfected after the approval of R.A. 5440 defendant-appellant was required in the resolution of March 26, 1969, to file a petition for review on certiorari of the decision of the Court of First Instance (Rollo, p. 16), which petition was filed on May 15, 1969 (Rollo, pp. 24-39).

In the resolution of May 20, 1969, this Court gave due course to the petition (Rollo, p. 65).

The only issue presented in this case is whether or not the element of consideration is present in the Grand Slam promotion of the respondent company, which, together with the elements of prize and chance, constitute the "lottery" prohibited by the Postal Law.

The petitioner contends that there is consideration because one has to buy any of respondent company's four products, namely, "Breeze", "Rinso", "Lifebuoy", and "Lux", to have a "Grand Slam" pack which will enable the purchaser to participate in the scheme. The rule that half-photo of prizes may be obtained free by writing to the Accountant of the company for which a self-addressed stamped envelope should be furnished does not eliminate the element of consideration because not all participants can be expected to obtain the required half-photos by mail mainly because said rule is announced only in advertisements but not in the packs of sponsor's products and also because while some of the products cost P0.10 only, the request by mail costs P0.20 and therefore more expensive.

Petitioner admitted that the element of consideration may be absent in the case of those persons who will buy the company's products containing the wrappers to participate in the Grand Slam, regardless of the inducement to participate in the games and to win prizes, but argued that as regards those persons who will buy any one of these products merely to participate in the Grand Slam scheme in order to win prizes and to whom the scheme is precisely directed, it means the payment of sums of money for the consideration of participating in the lottery. With respect to these persons, the element of consideration is obviously present. (Rollo, pp. 33-34).

On the other hand, private respondent countered that with or without its Grand Slam promotion, the products subject of the said sales drive are bought at the same usual price; with or without the promotion, no person is required to pay more than the current cost of the said products. A person, in order to obtain any of the free prizes, need not buy the products promoted, he need not even write private respondent's auditors for the free half photos. Since not all buyers of said respondent's products participate in the promotion, others could ask the half-photos from them; still others may scrounge in cans and other garbage receptacles. There is absolutely nothing in the rules of the promotion that requires as a condition for participation that one must buy any of the products promoted. Even if those who wish to participate should buy the products promoted, still the element of consideration is absent in the promotion. As above stated, the prices of said products were not increased let alone increased because of the promotion. Participants need not pay anything of value just for the chance to get a prize; the value paid is for the product which the buyer immediately receives and not for the bare chance to win any prize. (Brief for Respondents Appellees pp. 9-10).

The issue in this case has already been settled by this Court; the latest case on the matter is *Philippine Refining Company vs. Palomar*, G.R. No. L-29062, 148 SCRA 313, [1987] wherein this Court ruled:

"It appears that the Philippine Refining Company, herein appellee, resorted to two schemes to promote the sale

of its products: Breeze Easy Money and CAMIA Lucky-Key Hunt; both of which envisioned the giving away for free of certain prizes (without additional consideration) for the purchase of Breeze soap and CAMIA cooking oil. In other words, the participants would get the exact value of the prize for the goods plus the chance of winning in the scheme. No one would be required to pay more than the usual price of the products.

"This Court has consistently ruled that a plan whereby prizes can be obtained without any additional consideration (when a product is purchased) is not a lottery (Uy v. Palomar, L-23248, February 28, 1969; U.S. v. Baguio, 39 Phil. 8 62; Caltex (Phil.) Inc. v. Postmaster-General, 18 SCRA 247). It is thus clear that the schemes in the case at bar are not lotteries."

PREMISES CONSIDERED, the petition is DENIED for lack of merit, and the assailed decision of the Court of First Instance of Manila, Branch XIV, is AFFIRMED.

SO ORDERED.

Melencio-Herrera (Chairperson), Padilla, Sarmiento and Regalado, JJ., concur.

[*] Hon. Jesus de Veyra, Trial Judge, rendered the decision.

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