

**DEVELOPERS GROUP OF COMPANIES, INC., PETITIONER, VS. COURT OF APPEALS; SHANGRI-LA INTERNATIONAL HOTEL MANAGEMENT, LTD.; SHANGRI-LA PROPERTIES, INC.; MAKATI SHANGRI-LA HOTEL &#038; RE...**

*G.R. No. 104583. March 08, 1993*

Ponente: CRUZ, J.

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**CRUZ, J.:**

The core question before us is whether or not the petitioner was entitled to the writ of preliminary injunction issued by the trial court pending trial on the merits of the charge of infringement against the private respondent. We shall resolve only this question and not the merits of the petitioner's complaint.

The complaint was filed on April 15, 1991, by Developers Group of Companies, Inc. for "Infringement and Damages with Injunction" against Shangri-La International Hotel Management, Ltd., et al. It was docketed as Civil Case No. Q-91-8476 in the Regional Trial Court of Quezon City.

The plaintiff alleged that the Bureau of Patents had granted it Certificate of Registration No. 31904 for the trademark "Shangri-La" and "S"-logo, for restaurant services, as recorded in its Principal Register on May 31, 1983. The defendant was illegally using the said trade mark and logo, thus causing prejudice to the plaintiff for which it was entitled to damages. Developers also prayed for the issuance of a restraining order and/or preliminary injunction and asked that, after trial, judgment be rendered ordering all signs, prints, advertisements and other materials in the possession of or being used by Shangri-La bearing the subject service mark and S-logo be ordered destroyed.

In its answer, Shangri-La claimed that it was the legal and beneficial owner of the said mark and logo which it and its related Kuok Group of Companies had first adopted in 1962 and caused to be specially designed in 1975 for their hotel business in China, Hong Kong, Malaysia, Singapore and Thailand. It also alleged that, even before the complaint was filed, it had already filed with the Bureau of Patents a petition against Developers for the cancellation of the registration of the trade mark Shangri-La and "S" logo in the latter's name and for the registration of the same in the name of Shangri-La.

On July 2, 1991, Judge Felix M. de Guzman issued the following order:

Acting upon plaintiff's prayer for the issuance of a writ of preliminary injunction as contained in its verified complaint, filed thru counsel on April 15, 1991;

It appearing after hearing that plaintiff is entitled to the relief herein prayed for;

WHEREFORE, the Court hereby orders the issuance of a writ of preliminary injunction directing the defendants, their agents, representatives, licensees, assignees and all other persons acting under their authority and permission, to desist from using and continuing the use of plaintiff's mark "SHANGRI-LA" and "S-logo" or any reproduction, counterfeit, copy, or colorable imitation thereof, in the promotion or advertisement of

their hotel, management business, and realty projects and services in any manner whatsoever, upon filing of a bond in the amount of P1,250,000.00 to answer for payment of damages that defendants may sustain by reason of the issuance of the writ, should the Court finally decide that plaintiff is not entitled thereto.

SO ORDERED.

On July 12, 1991, he issued another order, to wit:

Acting on the "Urgent Ex-Parte Motion to Remove The Signs "Shangri-la" and "S-logo" Used by The Defendants And To Cite Defendants For Contempt," filed thru counsel on July 11, 1991;

It appearing per the Sheriff's Report, defendants have not removed the signs and or S-logo, the use of which was sought to be enjoined in the Order of this Court, despite proper service of the writ upon defendants Shangri-la, et al., thru its House counsel, Atty. Cynthia M. Laureta;

Considering that plaintiff shall sustain increased damages in the continuous use of the signs and logo because of the confusion of the public as to the nature and source of the business offered by the plaintiff;

Wherefore, the Deputy Sheriff concerned is hereby directed to remove the signs "Shangri-La and S-logo" being used by the defendants in the premises in defiance of the writ of preliminary injunction issued in the instant case.

As prayed for further, should police assistance be necessary for the effective implementation of this Order, the Philippine National Police (PNP) or any police agency is hereby directed to assist the said, Court officer in the execution hereof.

With respect to the second motion "that defendants be cited for contempt," the Court defers the resolution of the same.

SO ORDERED.

On August 1, 1991, Shangri-La filed a motion to lift the preliminary injunction, to which an opposition was filed by Developers on August 23, 1991. On September 20, 1991, the motion and opposition were declared submitted for resolution, but on September 25, 1991, Shangri-La, through a new counsel, withdrew its motion. It then filed with the respondent Court of Appeals a petition for certiorari with application for temporary restraining order and preliminary injunction against the orders issued by the trial court on July 2, 1991, and July 12, 1991.

On November 20, 1991, the Court of Appeals[1] rendered its decision, disposing as follows:

IN LIGHT OF ALL THE FOREGOING, We find and so hold that the orders dated July 2 and 12, 1991 were issued with grave abuse of discretion.

WHEREFORE, premises considered, the petition is hereby granted. The orders dated July 2 and July 12, 1991 issued by the respondent court in Civil Case No. Q-91-8476 are hereby declared NULL and VOID and consequently SET ASIDE.

SO ORDERED.

A motion for reconsideration was filed by Developers but this was denied on March 11, 1992.

Developers is now before this Court alleging inter alia that the petition for certiorari filed with the Court of Appeals on September 25, 1991 was premature. Its reason is that the motion to lift the preliminary injunction filed by Shangri-La had yet to be resolved by the trial court.

Shangri-La's answer is that the writ of preliminary injunction was issued by the trial court as early as July 5, 1991, and the motion to lift was heard on August 9, 1991, but from the latter date and until September 20, 1991, the trial

judge had made no effort to resolve the said motion. It therefore had to seek faster redress from the appellate court.

The general rule is that certiorari will not lie unless the lower court has, through a motion for reconsideration (or a motion to lift in this case), been given a chance to correct the errors imputed to it. However, this rule admits of exceptions, as (1) where the issue raised is purely one of law; (2) where the public interest is involved; and (3) in case of urgency.[2] Does the petitioner come under the rule or the exceptions?

We note that on September 25, 1991, instead of allowing the withdrawal of the motion to lift, the trial court required the former counsel of Shangri-La to comment thereon within 5 days. This was a correct order because he had not yet withdrawn his appearance and was still the counsel of record of Shangri-La although the motion was filed by another counsel. Nevertheless, we agree that the order would result in further delay in the proceedings to the prejudice of Shangri-La, which would in the meantime be prevented from continuing the use of the disputed mark and logo. Furthermore, the motion to lift had already been withdrawn precisely so it could be raised in the appellate court. We feel therefore that Shangri-La's immediate recourse to the Court of Appeals without awaiting resolution of its withdrawn motion to lift the injunction was not premature.

Now to the propriety of the injunction order.

Section 3, Rule 58, of the Revised Rules of Court provides:

SEC. 3. Grounds for issuance of preliminary injunction. - A preliminary injunction may be granted at any time after the commencement of the action and before judgment when it is established:

- (a) That the plaintiff is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission or continuance of some act complained of during the litigation or the non-performance thereof would probably work injustice to the plaintiff; or
- (c) That the defendant is doing, threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

Developers bases what it calls its clear legal right to the service mark and logo on the Certificate of Registration issued by the Bureau of Patents which it says can be interpreted broadly enough to cover not only restaurant services but also the hotel business, in which Shangri-La is engaged. Specifically, it invokes Section 20 of Republic Act No. 166, providing as follows:

SEC. 20. Certificate of Registration prima facie evidence of validity. - A certificate of registration of a mark or trade-name shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark or trade-name, and of the registrant's exclusive right to use the same in connection with the goods, business or services specified in the certificate, subject to any conditions and limitations stated therein.

On the other hand, Shangri-La claims that it had instituted. Inter Partes Case No. 3145 for Cancellation of Registration against Developers, on the ground of fraud, and applied for registration of the service mark and logo in its name in Inter Partes Case No. 3529, to protect its claimed rights to the said name and emblem. These cases were already pending in 1988 before the Bureau of Patents when the complaint for infringement was filed by Developers in the Regional Trial Court of Quezon City three years later.

The conflicting claims of the parties to the subject service mark and logo give us the impression that the right

claimed by the plaintiff as its basis for asking for injunctive relief is far from clear. The prima facie validity of its registration has been put into serious question by the above-stated cases filed by Shangri-La in the Bureau of Patents three years ahead of the complaint. While it is not required that Developer's claimed right be conclusively established at this stage, it is nevertheless necessary to show, at least tentatively, that it exists and is not vitiated by any substantial challenge or contradiction, such as has been made by the private respondent. In our view, the petitioner has failed to comply with this requirement.

As for the alleged damages, we find that Developers has not adduced any evidence of injury, either actual or imminent, resulting from the acts complained of against Shangri-La. There was no finding of the trial court affirming the claim for damages nor is there any support for it in the record. In fact, the order dated July 2, 1991, did not state, much less explain, the reasons for the issuance of the writ of preliminary injunction, simply saying that it appeared "after hearing that plaintiff is entitled to the relief prayed for." That was all. But that was not enough.

In *Olalia v. Hizon*,<sup>[3]</sup> this Court held:

A preliminary injunction is an order granted at any stage of an action prior to final judgment, requiring a person to refrain from a particular act. As the term itself suggests, it is merely temporary, subject to the final disposition of the principal action. The justification for the preliminary injunction is urgency. It is based on evidence tending to show that the action complained of must be stayed lest the movant suffer irreparable injury or the final judgment granting the relief sought become ineffectual. Necessarily, that evidence need only be a "sampling," as it were, and intended merely to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. The evidence submitted at the hearing on the motion for the preliminary injunction is not conclusive of the principal action, which has yet to be decided.

x x x

While to reiterate, the evidence to be submitted at the hearing on the motion for preliminary injunction need not be conclusive and complete, we find that the private respondent has not shown, at least tentatively, that she has been irreparably injured during the five-month period, the petitioner was operating under the trade name of Pampanga's Pride. On this ground alone, we find that the preliminary injunction should not have been issued by the trial court. It bears repeating that as a preliminary injunction is intended to prevent irreparable injury to the plaintiff, that possibility should be clearly established, if only provisionally, to justify the restraint of the act complained against. No such injury has been shown by the private respondent. Consequently, we must conclude that the issuance of the preliminary injunction in this case, being utterly without basis, was tainted with grave abuse of discretion that we can correct on certiorari.

The parties have gone to great lengths in arguing their respective positions on the merits of the infringement case but this is neither the time nor the place for such debate. The validity of the petitioner's complaint is a matter addressed initially to the trial court and cannot be resolved at this time by this Court.

Our conclusion is that Developers has not justified the issuance of the writ of preliminary injunction by proving that it has a legal right to the disputed mark and logo and that it has sustained injury as a result of the use thereof by Shangri-La. The Court of Appeals did not err in setting aside the orders of the trial court dated July 2, 1991, and July 12, 1991, for having been issued with grave abuse of discretion.

WHEREFORE, the challenged decision of the Court of Appeals is **AFFIRMED**. The Regional Trial Court of Quezon City is directed to proceed to the trial on the merits of Civil Case No. Q-91-8476 and to decide it with all deliberate dispatch.

**SO ORDERED.**

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

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[1] Through Justice Asaali S. Isnani, with Nocon and Martinez, JJ., concurring.

[2] Quirino vs. Gorospe, G.R. No. 58797, January 31, 1989.

**[3] 196 SCRA 665.**

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