

MSF TIRE AND RUBBER, INC., PETITIONER, VS. COURT OF APPEALS AND PHILTREAD TIRE WORKERS' UNION, RESPONDENTS.

G.R. No. 128632. August 05, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

Petitioner seeks a review of the decision[1] of the Court of Appeals, dated March 20, 1997, which set aside the order of the Regional Trial Court of Makati, dated July 2, 1996, in Civil Case No. 95-770, granting petitioner's application for a writ of preliminary injunction.

The facts are as follows:

A labor dispute arose between Philtread Tire and Rubber Corporation (Philtread) and private respondent, Philtread Tire Workers' Union (Union), as a result of which the Union filed on May 27, 1994 a notice of strike in the National Conciliation and Mediation Board-National Capital Region charging Philtread with unfair labor practices for allegedly engaging in union-busting for violation of the provisions of the collective bargaining agreement. This was followed by picketing and the holding of assemblies by the Union outside the gate of Philtread's plant at Km. 21, East Service Road, South Superhighway, Muntinlupa, Metro Manila. Philtread, on the other hand, filed a notice of lock-out on May 30, 1994 which it carried out on June 15, 1994.

In an order, dated September 4, 1994,[2] then Secretary of Labor Nieves Confesor assumed jurisdiction over the labor dispute and certified it for compulsory arbitration. She enjoined the Union from striking and Philtread from locking out members of the Union.

On December 9, 1994, during the pendency of the labor dispute, Philtread entered into a Memorandum of Agreement with Siam Tyre Public Company Limited (Siam Tyre), a subsidiary of Siam Cement. Under the Memorandum of Agreement, Philtread's plant and equipment would be sold to a new company (petitioner MSF Tire and Rubber, Inc.), 80% of which would be owned by Siam Tyre and 20% by Philtread, while the land on which the plant was located would be sold to another company (Sucat Land Corporation), 60% of which would be owned by Philtread and 40% by Siam Tyre.

This was done and the Union was informed of the purchase of the plant by petitioner. Petitioner then asked the Union to desist from picketing outside its plant and to remove the banners, streamers, and tent which it had placed outside the plant's fence.

As the Union refused petitioner's request, petitioner filed on May 25, 1995 a complaint for injunction with damages against the Union and the latter's officers and directors before the Regional Trial Court of Makati, Branch 59 where the case was docketed as Civil Case No. 95-770.

On June 13, 1995, the Union moved to dismiss the complaint alleging lack of jurisdiction on the part of the trial court. It insisted that the parties were involved in a labor dispute and that petitioner, being a mere "alter ego" of Philtread, was not an "innocent bystander."

After petitioner made its offer of evidence as well as the submission of the parties' respective memoranda, the trial court, in an order, dated March 25, 1996, denied petitioner's application for injunction and dismissed the complaint. However, on petitioner's motion, the trial court, on July 2, 1996, reconsidered its order, and granted an injunction. Its order read:[3]

Considering all that has been stated, the motion for reconsideration is granted. The Order dated March 25, 1996 is reconsidered and set aside. Plaintiff's complaint is reinstated and defendant's motion to dismiss is DENIED.

As regards plaintiff's application for the issuance of a writ of preliminary injunction, the Court finds that the plaintiff has established a clear and subsisting right to the injunctive relief, hence, the same is GRANTED. Upon posting by the plaintiff and approval by the Court of a bond in the amount of One Million (P1,000,000.00) Pesos which shall answer for any damage that the defendants may suffer by reason of the injunction in the event that the Court may finally adjudge that the plaintiff is not entitled thereto, let a writ of preliminary injunction issue ordering the defendants and any other persons acting with them and/or on their behalf to desist immediately from conducting their assembly in the area immediately outside the plaintiff's plant at Km. 21 East Service Road, South Superhighway, Muntinlupa, Metro Manila, and from placing and/or constructing banners, streamers, posters and placards, and/or tents/shanties or any other structure, on the fence of, and/or along the sidewalk outside, the said plant premises until further orders from this Court.

SO ORDERED.[4]

Without filing a motion for reconsideration, the Union filed on August 5, 1996 a petition for certiorari and prohibition before the Court of Appeals.

On March 20, 1997, the appellate court rendered a decision granting the Union's petition and ordering the trial court to dismiss the civil case for lack of jurisdiction. Hence, this petition for review. Petitioner makes the following arguments in support of its petition:

- The Court of Appeals erred in not summarily dismissing the Union's petition for its false certification of non-forum shopping and the Union's failure to file a motion for reconsideration before going up to the Court of Appeals on a petition for certiorari.
- The Court of Appeals gravely erred in dismissing Civil Case No. 95-770 for lack of jurisdiction and merit on the alleged ground that MSF did not have a clear and unmistakable right to entitle it to a writ of preliminary injunction.
- The Court of Appeals' pronouncement that it has not touched upon the issue of whether or not private respondent is a mere innocent bystander to the labor dispute between Philtread and the Union or upon the issue of whether or not private respondent is a mere dummy or continuity of Philtread is contrary to its own conclusions in the body of the decision, which conclusions are erroneous.
- The Court of Appeals gravely abused its discretion when it disallowed the injunction based on Philtread's remaining operations in the country and allowed the Union to exercise its right to communicate the facts of its labor dispute within MSF's premises, given the percentage of interest Philtread has in both MSF and the corporation which owns the land bearing said plant.

The issues are (1) whether the Union's failure to disclose the pendency of NCMB-NCR-NS-05-167-96 in its certification of non-forum shopping and its failure to file a motion for reconsideration of the order, dated July 2, 1996, of the trial court were fatal to its petition for review before the Court of Appeals; and (2) whether petitioner has shown a clear legal right to the issuance of a writ of injunction under the "innocent bystander" rule.

First. Forum shopping is the institution of two (2) or more actions or proceedings grounded on the same cause on

the supposition that one or the other court would make a favorable disposition.[5] It is an act of malpractice and is prohibited and condemned as trifling with courts and abusing their processes.[6] As held in *Executive Secretary v. Gordon*:^[7]

Forum-shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. Thus, it has been held that there is forum-shopping -

(1) whenever as a result of an adverse decision in one forum, a party seeks a favorable decision (other than by appeal or certiorari) in another, or

(2) if, after he has filed a petition before the Supreme Court, a party files another before the Court of Appeals since in such case he deliberately splits appeals "in the hope that even as one case in which a particular remedy is sought is dismissed, another case (offering a similar remedy) would still be open, or

(3) where a party attempts to obtain a preliminary injunction in another court after failing to obtain the same from the original court.

In determining whether or not there is forum-shopping, what is important is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs and in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.^[8]

Petitioner asserts that the Court of Appeals should have dismissed the Union's petition for review on the ground that the certification of non-forum shopping was false and perjurious as a result of the Union's failure to mention the existence of NCMB-NCR-NS-05-167-96, a proceeding involving the same parties and pending before the National Conciliation and Mediation Board.

The argument is without merit. Petitioner was a party to the proceedings before the National Conciliation and Mediation Board in which an order, dated September 8, 1994, was issued by then Secretary of Labor Nieves Confesor, enjoining any strike or lock-out by the parties.^[9] It was petitioner which initiated the action for injunction before the trial court. Aggrieved by the injunctive order issued by the lower court, the Union was forced to file a petition for review before the Court of Appeals. We cannot understand why petitioner should complain that no mention of the pendency of the arbitration case before the labor department was made in the certificate of non-forum shopping attached to the Union's petition in the Court of Appeals. The petition of the Union in the Court of Appeals was provoked by petitioner's action in seeking injunction from the trial court when it could have obtained the same relief from the Secretary of Labor.

Indeed, by focusing on the Union's certification before the appellate court, petitioner failed to notice that its own certification before the lower court suffered from the same omission for which it faults the Union. Although the body of petitioner's complaint mentions NCMB-NCR-NS-05-167-96, its own certification is silent concerning this matter.^[10] It is not in keeping with the requirements of fairness for petitioner to demand strict application of the prohibition against forum-shopping, when it, too, is guilty of the same omission.

Second. Petitioner asserts that its status as an "innocent bystander" with respect to the labor dispute between Philtread and the Union entitles it to a writ of injunction from the civil courts and that the appellate court erred in not upholding its corporate personality as independent of Philtread's.

In *Philippine Association of Free Labor Unions (PAFLU) v. Cloribel*,^[11] this Court, through Justice J.B.L. Reyes, stated the "innocent bystander" rule as follows:

The right to picket as a means of communicating the facts of a labor dispute is a phase of the freedom of

speech guaranteed by the constitution. If peacefully carried out, it can not be curtailed even in the absence of employer-employee relationship.

The right is, however, not an absolute one. While peaceful picketing is entitled to protection as an exercise of free speech, we believe the courts are not without power to confine or localize the sphere of communication or the demonstration to the parties to the labor dispute, including those with related interest, and to insulate establishments or persons with no industrial connection or having interest totally foreign to the context of the dispute. Thus the right may be regulated at the instance of third parties or "innocent bystanders" if it appears that the inevitable result of its exercise is to create an impression that a labor dispute with which they have no connection or interest exists between them and the picketing union or constitute an invasion of their rights. In one case decided by this Court, we upheld a trial court's injunction prohibiting the union from blocking the entrance to a feed mill located within the compound of a flour mill with which the union had a dispute. Although sustained on a different ground, no connection was found between the two mills owned by two different corporations other than their being situated in the same premises. It is to be noted that in the instances cited, peaceful picketing has not been totally banned but merely regulated. And in one American case, a picket by a labor union in front of a motion picture theater with which the union had a labor dispute was enjoined by the court from being extended in front of the main entrance of the building housing the theater wherein other stores operated by third persons were located.[12] (Emphasis added)

Thus, an "innocent bystander," who seeks to enjoin a labor strike, must satisfy the court that aside from the grounds specified in Rule 58 of the Rules of Court, it is entirely different from, without any connection whatsoever to, either party to the dispute and, therefore, its interests are totally foreign to the context thereof. For instance, in *PAFLU v. Cloribel*, supra, this Court held that Wellington and Galang were entirely separate entities, different from, and without any connection whatsoever to, the Metropolitan Bank and Trust Company, against whom the strike was directed, other than the incidental fact that they are the bank's landlord and co-lessee housed in the same building, respectively. Similarly, in *Liwayway Publications, Inc. v. Permanent Concrete Workers Union*, [13] this Court ruled that Liwayway was an "innocent bystander" and thus entitled to enjoin the union's strike because Liwayway's only connection with the employer company was the fact that both were situated in the same premises.

In the case at bar, petitioner cannot be said not to have such connection to the dispute. As correctly observed by the appellate court:

Coming now to the case before us, we find that the "negotiation, contract of sale, and the post transaction" between Philtread, as vendor, and Siam Tyre, as vendee, reveals a legal relation between them which, in the interest of petitioner, we cannot ignore. To be sure, the transaction between Philtread and Siam Tyre, was not a simple sale whereby Philtread ceased to have any proprietary rights over its sold assets. On the contrary, Philtread remains as 20% owner of private respondent and 60% owner of Sucat Land Corporation which was likewise incorporated in accordance with the terms of the Memorandum of Agreement with Siam Tyre, and which now owns the land where subject plant is located. This, together with the fact that private respondent uses the same plant or factory; similar or substantially the same working conditions; same machinery, tools, and equipment; and manufacture the same products as Philtread, lead us to safely conclude that private respondent's personality is so closely linked to Philtread as to bar its entitlement to an injunctive writ. Stated differently, given its close links with Philtread as to bar its entitlement to an injunctive writ. Stated differently, given its close links with Philtread, we find no clear and unmistakable right on the part of private respondent to entitle it to the writ of preliminary injunction it prayed for below.

....

We stress that that in so ruling, we have not touched on the issue of . . . whether or not private respondent is a mere dummy or continuation of Philtread. . . . [14]

Although, as petitioner contends, the corporate fiction may be disregarded where it is used to defeat public convenience, justify wrong, protect fraud, defend crime, or where the corporation is used as a mere alter-ego or business conduit,[15] it is not these standards but those of the "innocent bystander" rule which govern whether or not petitioner is entitled to an injunctive writ. Since petitioner is not an "innocent bystander", the trial court's order, dated July 2, 1996, is a patent nullity, the trial court having no jurisdiction to issue the writ of injunction. No motion for reconsideration need be filed where the order is null and void.[16]

WHEREFORE, petition is hereby DENIED and the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Buena, JJ., concur.

[1] Penned by Associate Justice Fidel P. Purisima and concurred in by Associate Justice Angelina Sandoval Gutierrez and Associate Justice Conrado M. Vazquez, Jr.

[2] Rollo, pp. 60-62.

[3] Per Judge Lucia Violago Isnani.

[4] Rollo, pp. 161-162.

[5] Solid Homes, Inc. v. Court of Appeals, 271 SCRA 157 (1997).

[6] Ibid.

[7] G.R. No. 134171, November 18, 1998.

[8] Golangco v. Court of Appeals, 283 SCRA 493 (1997).

[9] Rollo, pp. 60-62.

[10] Rollo, p. 58.

[11] 27 SCRA 465 (1969).

[12] Id., 472-473.

[13] 108 SCRA 161 (1981).

[14] Rollo, pp. 38-39.

[15] Indophil Textile Mill Workers Union v. Calica, 205 SCRA 697 (1992).

[16] Vda. de Sayman v. Court of Appeals, 121 SCRA 650 (1983).

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