# WILSON ONG CHING KIAN CHUAN, PETITIONER, VS. HON. COURT OF APPEALS AND LORENZO TAN, RESPONDENTS.

*G.R. No. 130360. August 15, 2001*

Ponente: QUISUMBING, J.

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**QUISUMBING, J.:**

This petition for review[1]seeks to annul the decision[2] dated August 27, 1997 of the Court of Appeals which set aside the resolutions[3] dated October 13 and December 15, 1993 as well as the order dated March 1, 1994 of the Regional Trial Court of Quezon City, Branch 94.[4]

Petitioner Wilson Ong Ching Kian Chuan ("Ong"), imports vermicelli from China National Cereals Oils and Foodstuffs Import and Export Corporation, based in Beijing, China, under the firm name C.K.C. Trading. He repacks it in cellophane wrappers with a design of two-dragons and the TOWER trademark on the uppermost portion. Ong acquired a Certificate of Copyright Registration from the National Library on June 9, 1993 on the said design.

Ong discovered that private respondent Lorenzo Tan repacked his vermicelli he imports from the same company but based in Qingdao, China in a "nearly" identical wrapper. On September 16, 1993, Ong filed against Tan a verified complaint for infringement of copyright with damages and prayer for temporary restraining order or writ of preliminary injunction with the Regional Trial Court in Quezon City. Ong alleged that he was the holder of a Certificate of Copyright Registration over the cellophane wrapper with the two-dragon design, and that Tan used an identical wrapper in his business. In his prayer for a preliminary injunction in addition to damages, he asked that Tan be restrained from using the wrapper. He said he would post a bond to guarantee the payment of damages resulting from the issuance of the writ of preliminary injunction.

The trial court issued a temporary restraining order on the same date the complaint was filed. Tan filed an opposition to Ong's application for a writ of preliminary injunction with counter-application for the issuance of a similar writ against Ong. Tan alleged that Ong was not entitled to an injunction. According to Tan, Ong did not have a clear right over the use of the trademark Pagoda and Lungkow vermicelli as these were registered in the name of CHINA NATIONAL CEREALS OIL AND FOODSTUFFS IMPORT AND EXPORT CORPORATION, SHANDONG CEREALS AND OILS BRANCH (hereafter Ceroilfood Shandong), based in Qingdao, China. Further, Tan averred that he was the exclusive distributor in the Philippines of the Pagoda and Lungkow vermicelli and was solely authorized to use said trademark. He added that Ong merely copied the two-dragon design from Ceroilfood Shandong which had the Certificates of Registration issued by different countries. He concluded that Ong's Certificate of Copyright Registration was not valid for lack of originality.

On September 30, 1993, Ong countered Tan's opposition to the issuance of the writ of preliminary injunction.

On October 13, 1993, the court issued the writ in Ong's favor upon his filing of a P100,000.00 bond.[5]

Tan filed a motion to dissolve the writ of preliminary injunction, but the trial court denied it on December 15,

1993.[6] The motion for reconsideration was also denied on March 1, 1994.

Tan elevated the case to the Court of Appeals via a special civil action for certiorari with a prayer for the issuance of a TRO and/or writ of preliminary injunction. Ong filed an opposition to Tan's prayer for an issuance of TRO and/or writ of preliminary injunction on the ground that the trial court did not commit a grave abuse of discretion in issuing the writ in his favor.

After oral argument, the Court of Appeals rendered a decision on August 8, 1994, setting aside the trial court's order. It decreed:

> WHEREFORE, the petition is GIVEN DUE COURSE, and GRANTED. The order dated October 13, 1993 and related orders, as well as the writ of preliminary injunction issued by the respondent court, are SET ASIDE as issued with grave abuse of discretion. No costs.
>
> SO ORDERED.[7]

Ong filed a motion for reconsideration and on January 3, 1995, the Court of Appeals modified its August 8, 1994 order as follows:

> WHEREFORE the phrase "the order dated October 13, 1993 and related orders, as well as the writ of preliminary injunction issued by the respondent court, are SET ASIDE as issued with grave abuse of discretion" is hereby deleted in our resolution dated 08 August 1994. In all other respects, said resolution must be maintained.
>
> However, let a writ of preliminary injunction be issued enjoining the herein respondents and any and all persons acting for and in their behalf from enforcing and/or implementing the Writ of Preliminary Injunction issued on October 15, 1993 pursuant to the Resolution dated October 13, 1993 of the PUBLIC RESPONDENT in Civil Case No. Q-93-17628 entitled "WILSON ONG CHING KIAN CHUAN, ETC. vs. LORENZO TAN, ETC." upon petitioner's filing of a bond of P200,000.00.
>
> The Branch Clerk of Court of the RTC, Branch 94, Quezon City is directed to elevate the records of Civil Case No. 293-17128 within TEN (10) DAYS from notice.
>
> The parties are given THIRTY (30) DAYS from notice to file their memorandum or any pertinent manifestation on the matter, after which the case shall be considered submitted for decision.
>
> SO ORDERED.[8]

Pursuant to the Court of Appeals' resolution on January 16, 1996, the parties submitted their memoranda. On August 27, 1997, the appellate court promulgated its decision, decreeing as follows:

> WHEREFORE, the resolutions dated October 13, 1993 and December 15, 1993 as well as the order dated March 1, 1994 - all in Civil Case No. Q-93-17628 are hereby SET ASIDE and our injunction heretofore issued made permanent.
>
> IT IS SO ORDERED.[9]

On October 17, 1997, Ong filed the instant petition for review, claiming that the Court of Appeals committed grave and serious errors tantamount to acting with grave abuse of discretion and/or acting without or in excess of its jurisdiction:

> - ...WHEN IT ISSUED A PERMANENT PRELIMINARY INJUNCTION IN FAVOR OF THE PRIVATE RESPONDENT WHEN THE LATTER'S RIGHT TO SUCH A RELIEF IS NOT CLEAR, DOUBTFUL AND HAS NO LEGAL OR FACTUAL BASIS.


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A. CERTIFICATE OF COPYRIGHT REGISTRATION JUSTIFY ISSUANCE OF WRIT OF PRELIMINARY INJUNCTION UNDER P.D. NO. 49.

B. ISSUANCE OF PRELIMINARY INJUNCTION MUST BE BASED ON CLEAR AND UNMISTAKABLE RIGHT WHICH PETITIONER HAD AND WHICH RIGHT WAS INVADED BY THE PRIVATE RESPONDENT.

C. COURT OF APPEALS' DECISION OF AUGUST 8, 1994 AND ITS RESOLUTION OF JANUARY 3, 1995 RESULTS IN CONFUSION.

- ...BY 'INTERFERING' WITH THE JUDICIAL DISCRETION OF THE TRIAL COURT.

A. RESPONDENT COURT OF APPEALS' INTERFERENCE WITH THE DISCRETION OF TRIAL COURT CONSTITUTES GRAVE ABUSE OF DISCRETION.

- ...BY ISSUING A WRIT OF PRELIMINARY INJUNCTION IN FAVOR OF THE PRIVATE RESPONDENT AND DISREGARDING THE WRIT OF PRELIMINARY INJUNCTION ISSUED BY THE TRIAL COURT WHOM (SIC), UNDER THE JANUARY 13, 1995 RESOLUTION OF RESPONDENT COURT OF APPEALS, WAS JUDICIALLY HELD NOT TO HAVE COMMITTED ANY GRAVE ABUSE OF DISCRETION IN THE ISSUANCE OF THE OCTOBER 13, 1993 AND 'RELATED ORDERS'.

A. ISSUANCE OF WRIT OF PRELIMINARY INJUNCTION ADDRESSED TO THE SOUND DISCRETION OF THE TRIAL COURT.

- ...WHEN IT MADE ITS OWN FINDINGS AND CONCLUSIONS, PRE-EMPTING THE TRIAL COURT AND PRE-JUDGING THE CASE, THUS LEAVING THE TRIAL COURT WITH NOTHING TO RULE UPON.

A. COURT OF APPEALS PREJUDGED THE CASE REMANDED TO THE TRIAL COURT

The issues for our determination are: Was the issuance of the writ of preliminary injunction proper? Was there grave abuse of discretion committed by the Court of Appeals when it set aside the order of the trial court, then issued a judgment touching on the merits?

Petitioner avers that the CA erred in issuing a preliminary injunction in private respondent's favor. He says, firstly, that he is more entitled to it. He states that as holder of the Certificate of Copyright Registration of the twin-dragon design, he has the protection of P.D. No. 49.[10] Said law allows an injunction in case of infringement. Petitioner asserts that private respondent has no registered copyright and merely relies on the trademark of his principal abroad, which insofar as Philippine laws is concerned, cannot prevail over the petitioner's copyright.

Private respondent, for his part, avers that petitioner has no "clear right" over the use of the copyrighted wrapper since the PAGODA trademark and label were first adopted and used and have been duly registered by Ceroilfood Shandong not only in China but in nearly 20 countries and regions worldwide. Petitioner was not the original creator of the label, but merely copied the design of Ceroilfood Shandong. Private respondent presented copies of the certificates of copyright registration in the name of Ceroilfood Shandong issued by at least twenty countries and regions worldwide which although unauthenticated are, according to him, sufficient to provide a sampling of the evidence needed in the determination of the grant of preliminary injunction.[11] Private respondent alleges, that the trademark PAGODA BRAND was registered in China on October 31, 1979[12] while the trademark LUNGKOW VERMICELLI WITH TWO-DRAGON DEVICE was registered on August 15, 1985.[13]

To resolve this controversy, we have to return to basics. A person to be entitled to a copyright must be the original creator of the work. He must have created it by his own skill, labor and judgment without directly copying or

evasively imitating the work of another.[14] The grant of preliminary injunction in a case rests on the sound discretion of the court with the caveat that it should be made with extreme caution.[15] Its grant depends chiefly on the extent of doubt on the validity of the copyright, existence of infringement, and the damages sustained by such infringement.[16] In our view, the copies of the certificates of copyright registered in the name of Ceroilfood Shandong sufficiently raise reasonable doubt. With such a doubt, the preliminary injunction is unavailing.[17] In Medina vs. City Sheriff, Manila, 276 SCRA 133, 139 (1997), where the complainant's title was disputed, we held that injunction was not proper.

Petitioner Ong argues that the Court of Appeals erred and contradicted itself in its January 3, 1995 Resolution, where it deleted the phrase "the order dated October 13, 1993 and related orders, as well as the writ of preliminary injunction issued by the respondent court, are SET ASIDE as issued with grave abuse of discretion" in its August 8, 1994 decision, and at the same time issued a writ of preliminary injunction in Tan's favor.

Ong's claim (that the Court of Appeals in deleting the aforequoted phrase in the August 8, 1994 decision abandoned its earlier finding of grave abuse of discretion on the part of the trial court), however, is without logical basis. The appellate court merely restated in its own words the issue raised in the petition: from a) whether the RTC committed grave abuse of discretion, to b) whether Tan was entitled to an injunctive relief. Then it clarified that the relief sought is a prohibition against Ong and his agents from enforcing the writ of preliminary injunction. Properly understood, an order enjoining the enforcement of a writ of preliminary injunction issued by the RTC in a certiorari proceeding under Rule 65 of the Rules of Court effectively sets aside the RTC order for being issued with grave abuse of discretion.

To be entitled to an injunctive writ, petitioner must show, inter alia, the existence of a clear and unmistakable right and an urgent and paramount necessity for the writ to prevent serious damage.[18] From the above discussion, we find that petitioner's right has not been clearly and unmistakably demonstrated. That right is what is in dispute and has yet to be determined. In Developers Group of Companies, Inc. vs. Court of Appeals, 219 SCRA 715, 722-723 (1993), we held that in the absence of proof of a legal right and the injury sustained by the plaintiff, an order of the trial court granting the issuance of an injunctive writ will be set aside, for having been issued with grave abuse of discretion. Conformably, there was no abuse of discretion by the Court of Appeals when it issued its own order to restrain the enforcement of the preliminary injunction issued by the trial court.

Finally, we note that the complaint initially filed with the RTC was for infringement of copyright. The trial court's resolution subject of Tan's petition under Rule 65 before the CA concerns the correctness of the grant of the writ of preliminary injunction. The only issue brought before the CA involved the grave abuse of discretion allegedly committed by the trial court in granting the writ of preliminary injunction. The Court of Appeals in declaring that the wrapper of petitioner is a copy of Ceroilfood Shandong's wrapper went beyond that issue and touched on the merits of the infringement case, which remains to be decided by the trial court.[19] In our view, it was premature for the Court of Appeals to declare that the design of petitioner's wrapper is a copy of the wrapper allegedly registered by Ceroilfood Shandong. That matter remains for decision after appropriate proceedings at the trial court.

WHEREFORE, the instant petition is PARTIALLY GRANTED. The prayer for a writ of preliminary injunction to prohibit Tan from using the cellophane wrapper with two-dragon device is denied, but the finding of the respondent appellate court that Ong's copyrighted wrapper is a copy of that of Ceroilfood Shandong is SET ASIDE for being premature. The Regional Trial Court of Quezon City, Branch 94, is directed to proceed with the trial to determine the merits of Civil Case No. 33779 expeditiously. Let the records of this case be REMANDED to said trial court promptly.

No pronouncement as to costs.

**SO ORDERED.**

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 11-20.

[2] Id. at 34-38.

[3] Id. at 50-55.

[4] Id. at 34-49.

[5] Id. at 50-53.

[6] Id. at 54-55.

[7] Id. at 23.

[8] Id., at 72-73.

[9] Id. at 48.

[10] PD 49, Chapter I, Sec. 2. The rights granted by this Decree shall, from the moment of creation, subsist with respect to any of the following classes of works:

> x x x
>
> (o) Prints, pictorial, illustrations, advertising copies, labels, tags, and box wraps.

Chapter II, Article VI, Sec. 28. Any person infringing a copyright shall be liable:

> (a) To an injunction restraining such infringement.

[11] Syndicated Media Access Corporation, et al. vs. CA, et al., 219 SCRA 794, 798 (1993).

[12] CA Rollo, p. 51.

[13] Ibid.

[14] Hoffman vs. Le Traunik, 209 Federal Reporter 375, 379.

[15] Bataclan vs. CA, et al., 175 SCRA 764, 770 (1989).

[16] 18 CJS 241, citing Boosey vs. Empire Music Co., 224 F 646 and Sweet vs. Bromley, 154 F 754.

**[17] 18 CJS 242.**

[18] Arcega vs. CA, et al., 275 SCRA 176, 180 (1997).

[19] See Developers Group of Companies Inc. vs. CA, 219 SCRA 715, 722 (1993).


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