

MELBAROSE R. SASOT AND ALLANDALE R. SASOT, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, THE HONORABLE COURT OF APPEALS, AND REBECCA G. SALVADOR, PRESIDING JUDGE, RTC, BRANCH 1...

G.R. NO. 143193. June 29, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

The case subject of the present special civil action for certiorari is a criminal prosecution against petitioners for unfair competition under Article 189 of the Revised Penal Code, filed before the Regional Trial Court (RTC) of Manila (Branch 1), and docketed as Criminal Case No. 98-166147.[1]

Some time in May 1997, the National Bureau of Investigation (NBI) conducted an investigation pursuant to a complaint by the NBA Properties, Inc., against petitioners for possible violation of Article 189 of the Revised Penal Code on unfair competition. In its Report dated June 4, 1997, the NBI stated that NBA Properties, Inc., is a foreign corporation organized under the laws of the United States of America, and is the registered owner of NBA trademarks and names of NBA basketball teams such as “USA Basketball,” “Chicago Bulls,” “Orlando Magic,” “Los Angeles Lakers,” “Rockets,” “Phoenix Suns,” “Bullets,” “Pacers,” “Charlotte Hornets,” “Blazers,” “Denver Nuggets,” “Sacramento Kings,” “Miami Heat,” “Utah Jazz,” “Detroit Pistons,” “Milwaukee Bucks,” “Seattle Sonics,” “Toronto Raptors,” “Atlanta Hawks,” “Cavs,” “Dallas Mavericks,” “Minnesota Timberwolves,” and “Los Angeles Clippers.” These names are used on hosiery, footwear, t-shirts, sweatshirts, tank tops, pajamas, sport shirts, and other garment products, which are allegedly registered with the Bureau of Patents, Trademarks and Technology Transfer. The Report further stated that during the investigation, it was discovered that petitioners are engaged in the manufacture, printing, sale, and distribution of counterfeit “NBA” garment products. Hence, it recommended petitioners’ prosecution for unfair competition under Article 189 of the Revised Penal Code.[2]

In a Special Power of Attorney dated October 7, 1997, Rick Welts, as President of NBA Properties, Inc., constituted the law firm of Ortega, Del Castillo, Bacorro, Odulio, Calma & Carbonell, as the company’s attorney-in-fact, and to act for and on behalf of the company, in the filing of criminal, civil and administrative complaints, among others.[3] The Special Power of Attorney was notarized by Nicole Brown of New York County and certified by Norman Goodman, County Clerk and Clerk of the Supreme Court of the State of New York. Consul Cecilia B. Rebono of the Consulate General of the Philippines, New York, authenticated the certification.[4] Welts also executed a Complaint-Affidavit on February 12, 1998, before Notary Public Nicole J. Brown of the State of New York.[5]

Thereafter, in a Resolution dated July 15, 1998, Prosecution Attorney Aileen Marie S. Gutierrez recommended the filing of an Information against petitioners for violation of Article 189 of the Revised Penal Code.[6] The accusatory portion of the Information reads:

That on or about May 9, 1997 and on dates prior thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, above named accused ALLANDALE SASOT and MELBAROSE SASOT of Allandale Sportslines, Inc., did then and there willfully, unlawfully and feloniously manufacture and sell various garment products bearing the appearance of “NBA” names, symbols and trademarks, inducing the public to believe that the goods offered by them are those of “NBA” to the damage and prejudice of the NBA Properties, Inc., the trademark owner of the “NBA”.

CONTRARY TO LAW.[7]

Before arraignment, petitioners filed a Motion to Quash the Information on the following grounds:

I. THAT THE FACTS CHARGED DO NOT CONSTITUTE AN OFFENSE

II. AND THIS HONORABLE COURT HAD NO JURISDICTION OVER THE OFFENSE CHARGED OR THE PERSON OF THE ACCUSED[8]

In support of the foregoing, petitioners argue that the fiscal should have dismissed Welts’s complaint because under the rules, the complaint must be sworn to before the prosecutor and the copy on record appears to be only a fax transmittal.[9] They also contend that complainant is a foreign corporation not doing business in the Philippines, and cannot be protected by Philippine patent laws since it is not a registered patentee. Petitioners aver that they have been using the business name “ALLANDALE SPORTSLINE, INC.” since 1972, and their designs are original and do not appear to be similar to complainant’s, and they do not use complainant’s logo or design.[10]

The trial prosecutor of the RTC-Manila (Branch 1), Jaime M. Guray, filed his Comment/Opposition to the motion to quash, stating that he has the original copy of the complaint, and that complainant has an attorney-in-fact to represent it. Prosecutor Guray also contended that the State is entitled to prosecute the offense even without the participation of the private offended party, as the crime charged is a public crime.[11]

The trial court sustained the prosecution’s arguments and denied petitioners’ motion to quash in its Order dated March 5, 1999.[12]

Petitioners filed a special civil action for certiorari with the Court of Appeals (CA) docketed as CA-G.R. SP No. 52151 which was dismissed per its Decision dated January 26, 2000.[13] According to the CA, the petition is not the proper remedy in assailing a denial of a motion to quash, and that the grounds raised therein should be raised during the trial of the case on the merits.[14] The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the petition for certiorari is hereby DISMISSED. Respondent court is hereby ordered to conduct further proceedings with dispatch in Criminal Case No. 98-166147.

SO ORDERED.[15]

Petitioners sought reconsideration of the Decision but this was denied by the CA.[16]

Hence, the present petition for review on certiorari under Rule 45 of the Rules of Court, with issues raised as follows:

- WHETHER A FOREIGN CORPORATION NOT ENGAGED AND LICENSE (sic) TO DO BUSINESS IN THE PHILIPPINES MAY MAINTAIN A CAUSE OF ACTION FOR UNFAIR COMPETITION.
- WHETHER AN OFFICER OF A FOREIGN CORPORATION MAY ACT IN BEHALF OF A CORPORATION WITHOUT AUTHORITY FROM ITS BOARD OF DIRECTORS.
- WHETHER A FOREIGN CORPORATION NOT ENGAGED IN BUSINESS AND WHOSE EMBLEM IT

SOUGHT TO PROTECT IS NOT IN ACTUAL USE IS ENTITLED TO THE PROTECTION OF THE PHILIPPINE LAW.

- WHETHER THE RESPONDENT REGIONAL TRIAL COURT CORRECTLY ASSUMED JURISDICTION OVER THE CASE AND THE PERSONS OF THE ACCUSED.

- WHETHER THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DISMISSED THE PETITION.[17]

Petitioners reiterate the argument that the complaint filed by Rick Welts of the NBA Properties, Inc., is defective and should have been dismissed by the fiscal because it should have been personally sworn to by the complainant before the investigating prosecutor. They also reiterate the claim that Welts failed to show any board resolution showing his authority to institute any action in behalf of the company, and that the NBA's trademarks are not being actually used in the Philippines, hence, they are of public dominion and cannot be protected by Philippine patent laws. Petitioners further contend that they have not committed acts amounting to unfair competition.[18]

The Office of the Solicitor General appeared in behalf of the People, and filed its Amended Comment to the petition, praying for its dismissal, arguing that the CA did not commit any grave abuse of discretion in dismissing the petition for reasons stated in its Decision dated January 26, 2000.[19]

The petition must be denied.

The Court has consistently held that a special civil action for certiorari is not the proper remedy to assail the denial of a motion to quash an information.[20] The proper procedure in such a case is for the accused to enter a plea, go to trial without prejudice on his part to present the special defenses he had invoked in his motion to quash and, if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law.[21] Thus, petitioners should not have forthwith filed a special civil action for certiorari with the CA and instead, they should have gone to trial and reiterate the special defenses contained in their motion to quash. There are no special or exceptional circumstances[22] in the present case such that immediate resort to a filing of a petition for certiorari should be permitted. Clearly, the CA did not commit any grave abuse of discretion in dismissing the petition.

Moreover, the Court does not find any justification for the quashal of the Information filed against petitioners.

For one, while petitioners raise in their motion to quash the grounds that the facts charged do not constitute an offense and that the trial court has no jurisdiction over the offense charged or the person of the accused,[23] their arguments focused on an alleged defect in the complaint filed before the fiscal, complainant's capacity to sue and petitioners' exculpatory defenses against the crime of unfair competition.

Section 3, Rule 117 of the 1985 Rules of Criminal Procedure, which was then in force at the time the alleged criminal acts were committed, enumerates the grounds for quashing an information, to wit:

- a) That the facts charged do not constitute an offense;
- b) That the court trying the case has no jurisdiction over the offense charged or the person of the accused;
- c) That the officer who filed the information had no authority to do so;
- d) That it does not conform substantially to the prescribed form;
- e) That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses;

- f) That the criminal action or liability has been extinguished;
- g) That it contains averments which, if true, would constitute a legal excuse or justification; and
- h) That the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged.

Nowhere in the foregoing provision is there any mention of the defect in the complaint filed before the fiscal and the complainant's capacity to sue as grounds for a motion to quash.

For another, under Section 3, Rule 112 of the 1985 Rules of Criminal Procedure, a complaint is substantially sufficient if it states the known address of the respondent, it is accompanied by complainant's affidavit and his witnesses and supporting documents, and the affidavits are sworn to before any fiscal, state prosecutor or government official authorized to administer oath, or in their absence or unavailability, a notary public who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits. All these have been duly satisfied in the complaint filed before Prosecution Attorney Aileen Marie S. Gutierrez. It must be noted that even the absence of an oath in the complaint does not necessarily render it invalid.[24] Want of oath is a mere defect of form, which does not affect the substantial rights of the defendant on the merits.[25]

In this case, Welts's Complaint-Affidavit contains an acknowledgement by Notary Public Nicole Brown of the State of New York that the same has been subscribed and sworn to before her on February 12, 1998,[26] duly authenticated by the Philippine Consulate. While the copy on record of the complaint-affidavit appears to be merely a photocopy thereof, Prosecution Attorney Gutierrez stated that complainant's representative will present the authenticated notarized original in court,[27] and Prosecutor Guray manifested that the original copy is already on hand.[28] It is apt to state at this point that the prosecutor enjoys the legal presumption of regularity in the performance of his duties and functions, which in turn gives his report the presumption of accuracy.[29]

Moreover, records show that there are other supporting documents from which the prosecutor based his recommendation, to wit:

- (1) The NBI Report dated June 4, 1997, containing an account of the investigation conducted from April 30, 1997 to May 9, 1997, and the subsequent search and seizure of several items from petitioners' establishment;[30]
- (2) The letter dated May 8, 1997 from the law firm of Ortega, Del Castillo, Bacorro, Odulio, Calma & Carbonell to the NBI, seeking assistance in stopping the illegal manufacture, distribution and sale of "fake products bearing the 'NBA' trademark, and in prosecuting the proprietors of aforesaid factory;"[31] and
- (3) The Joint Affidavit executed by Rechie D. Malicse and Dalisay P. Bal-ot of the Pinkerton Consulting Services (Phils.) Inc., which was certified to by Prosecution Attorney Gutierrez, attesting to their findings that petitioners were found to be manufacturing, printing, selling, and distributing counterfeit "NBA" garment products.[32]

Consequently, if the information is valid on its face, and there is no showing of manifest error, grave abuse of discretion and prejudice on the part of public prosecutor, as in the present case, the trial court should respect such determination.[33]

More importantly, the crime of Unfair Competition punishable under Article 189 of the Revised Penal Code[34] is a public crime. It is essentially an act against the State and it is the latter which principally stands as the injured party. The complainant's capacity to sue in such case becomes immaterial.

In *La Chemise Lacoste, S.A. vs. Fernandez*,^[35] a case akin to the present dispute, as it involved the crime of Unfair Competition under Article 189 of the Revised Penal Code, and the quashal of search warrants issued against manufacturers of garments bearing the same trademark as that of the petitioner, the Court succinctly ruled that:

More important is the nature of the case which led to this petition. What preceded this petition for certiorari was a letter-complaint filed before the NBI charging Hemandas with a criminal offense, i.e., violation of Article 189 of the Revised Penal Code. If prosecution follows after the completion of the preliminary investigation being conducted by the Special Prosecutor the information shall be in the name of the People of the Philippines and no longer the petitioner which is only an aggrieved party since a criminal offense is essentially an act against the State. It is the latter which is principally the injured party although there is a private right violated. Petitioner's capacity to sue would become, therefore, of not much significance in the main case. We cannot allow a possible violator of our criminal statutes to escape prosecution upon a far-fetched contention that the aggrieved party or victim of a crime has no standing to sue.

In upholding the right of the petitioner to maintain the present suit before our courts for unfair competition or infringement of trademarks of a foreign corporation, we are moreover recognizing our duties and the rights of foreign states under the Paris Convention for the Protection of Industrial Property to which the Philippines and France are parties. We are simply interpreting and enforcing a solemn international commitment of the Philippines embodied in a multilateral treaty to which we are a party and which we entered into because it is in our national interest to do so.^[36] (Emphasis supplied)

Lastly, with regard to petitioners' arguments that the NBA Properties, Inc., is not entitled to protection under Philippine patent laws since it is not a registered patentee, that they have not committed acts amounting to unfair competition for the reason that their designs are original and do not appear to be similar to complainant's, and they do not use complainant's logo or design, the Court finds that these are matters of defense that are better ventilated and resolved during trial on the merits of the case.

WHEREFORE, the petition is DENIED for lack of merit. Let the records of this case be REMANDED to the Regional Trial Court of Manila (Branch 24) where Criminal Case No. 98-166147 is presently assigned, for further proceedings with reasonable dispatch.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Per letter dated May 4, 2005 sent by Clerk of Court Rosalinda S. Medinaceli-Gepigon of the Regional Trial Court of Manila (Branch 1), this case is already assigned to Branch 24, which was designated under A.M. No. 02-1-11-SC (February 19, 2002) as the Intellectual Property Court of Manila.

[2] Records, pp. 6-8.

[3] *Id.*, pp. 99-100.

[4] *Id.*, p. 98.

[5] *Id.*, pp. 108-110.

[6] *Id.*, pp. 31-33.

[7] *Id.*, p. 1.

[8] *Id.*, p. 79.

[9] *Id.*, p. 80.

[10] *Id.*, pp. 81-82.

[11] *Id.*, pp. 95-97.

[12] *Id.*, p. 103.

[13] Penned by Associate Justice Rodrigo V. Cosico, Associate Justices Eugenio S. Labitoria and Elvi John S. Asuncion, concurring.

[14] CA Rollo, pp. 77-82.

[15] *Id.*, p. 82.

[16] *Id.*, p. 107.

[17] Rollo, p. 13.

[18] *Id.*, pp. 13-27.

[19] *Id.*, pp. 213-218.

[20] *Raro vs. Sandiganbayan*, G.R. No. 108431, July 14, 2000, 335 SCRA 581.

[21] *Basa vs. People*, G.R. No. 152444, February 16, 2005.

[22] *Lavides vs. Court of Appeals*, G.R. No. 129670, February 1, 2000, 324 SCRA 321.

[23] Records, p. 79.

[24] *People vs. Cayosa*, G.R. No. L-24689, December 26, 1969, 30 SCRA 806.

[25] *People vs. Historillo*, G.R. No. 130408, June 16, 2000, 33 SCRA 615.

[26] Records, p. 85.

[27] *Id.*, p. 33.

[28] *Id.*, p. 96.

[29] *People vs. Court of Appeals*, G.R. No. 126005, January 21, 1999, 301 SCRA 475.

[30] Records, pp. 6-9.

[31] *Id.*, pp. 12-13.

[32] *Id.*, pp. 18-19.

[33] *People vs. Court of Appeals*, *supra*.

[34] Article 189 of the Revised Penal Code has already been repealed by the express provisions of Republic Act No. 8293 or The Intellectual Property Code, which took effect on January 1, 1998.

[35] G.R. Nos. L-63796-97, G.R. No. 65659, May 21, 1984, 129 SCRA 373.

[36] *Id.*, p. 386.

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