

DUNCAN ASSOCIATION OF DETAILMAN-PTGWO AND PEDRO A. TECSON, PETITIONERS, VS. GLAXO WELLCOME PHILIPPINES, INC. RESPONDENT.

G.R. No. 162994. September 17, 2004

Ponente: TINGA, J.

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TINGA, J.:

Confronting the Court in this petition is a novel question, with constitutional overtones, involving the validity of the policy of a pharmaceutical company prohibiting its employees from marrying employees of any competitor company.

This is a Petition for Review on Certiorari assailing the Decision[1] dated May 19, 2003 and the Resolution dated March 26, 2004 of the Court of Appeals in CA-G.R. SP No. 62434.[2]

Petitioner Pedro A. Tecson (Tecson) was hired by respondent Glaxo Wellcome Philippines, Inc. (Glaxo) as medical representative on October 24, 1995, after Tecson had undergone training and orientation.

Thereafter, Tecson signed a contract of employment which stipulates, among others, that he agrees to study and abide by existing company rules; to disclose to management any existing or future relationship by consanguinity or affinity with co-employees or employees of competing drug companies and should management find that such relationship poses a possible conflict of interest, to resign from the company.

The Employee Code of Conduct of Glaxo similarly provides that an employee is expected to inform management of any existing or future relationship by consanguinity or affinity with co-employees or employees of competing drug companies. If management perceives a conflict of interest or a potential conflict between such relationship and the employee's employment with the company, the management and the employee will explore the possibility of a "transfer to another department in a non-counterchecking position" or preparation for employment outside the company after six months.

Tecson was initially assigned to market Glaxo's products in the Camarines Sur-Camarines Norte sales area.

Subsequently, Tecson entered into a romantic relationship with Bettsy, an employee of Astra Pharmaceuticals[3] (Astra), a competitor of Glaxo. Bettsy was Astra's Branch Coordinator in Albay. She supervised the district managers and medical representatives of her company and prepared marketing strategies for Astra in that area.

Even before they got married, Tecson received several reminders from his District Manager regarding the conflict of interest which his relationship with Bettsy might engender. Still, love prevailed, and Tecson married Bettsy in September 1998.

In January 1999, Tecson's superiors informed him that his marriage to Bettsy gave rise to a conflict of interest. Tecson's superiors reminded him that he and Bettsy should decide which one of them would resign from their jobs, although they told him that they wanted to retain him as much as possible because he was performing his job

well.

Tecson requested for time to comply with the company policy against entering into a relationship with an employee of a competitor company. He explained that Astra, Bettsy's employer, was planning to merge with Zeneca, another drug company; and Bettsy was planning to avail of the redundancy package to be offered by Astra. With Bettsy's separation from her company, the potential conflict of interest would be eliminated. At the same time, they would be able to avail of the attractive redundancy package from Astra.

In August 1999, Tecson again requested for more time resolve the problem. In September 1999, Tecson applied for a transfer in Glaxo's milk division, thinking that since Astra did not have a milk division, the potential conflict of interest would be eliminated. His application was denied in view of Glaxo's "least-movement-possible" policy.

In November 1999, Glaxo transferred Tecson to the Butuan City-Surigao City-Agusan del Sur sales area. Tecson asked Glaxo to reconsider its decision, but his request was denied.

Tecson sought Glaxo's reconsideration regarding his transfer and brought the matter to Glaxo's Grievance Committee. Glaxo, however, remained firm in its decision and gave Tecson until February 7, 2000 to comply with the transfer order. Tecson defied the transfer order and continued acting as medical representative in the Camarines Sur-Camarines Norte sales area.

During the pendency of the grievance proceedings, Tecson was paid his salary, but was not issued samples of products which were competing with similar products manufactured by Astra. He was also not included in product conferences regarding such products.

Because the parties failed to resolve the issue at the grievance machinery level, they submitted the matter for voluntary arbitration. Glaxo offered Tecson a separation pay of one-half ($\frac{1}{2}$) month pay for every year of service, or a total of P50,000.00 but he declined the offer. On November 15, 2000, the National Conciliation and Mediation Board (NCMB) rendered its Decision declaring as valid Glaxo's policy on relationships between its employees and persons employed with competitor companies, and affirming Glaxo's right to transfer Tecson to another sales territory.

Aggrieved, Tecson filed a Petition for Review with the Court of Appeals assailing the NCMB Decision.

On May 19, 2003, the Court of Appeals promulgated its Decision denying the Petition for Review on the ground that the NCMB did not err in rendering its Decision. The appellate court held that Glaxo's policy prohibiting its employees from having personal relationships with employees of competitor companies is a valid exercise of its management prerogatives.[4]

Tecson filed a Motion for Reconsideration of the appellate court's Decision, but the motion was denied by the appellate court in its Resolution dated March 26, 2004.[5]

Petitioners filed the instant petition, arguing therein that (i) the Court of Appeals erred in affirming the NCMB's finding that the Glaxo's policy prohibiting its employees from marrying an employee of a competitor company is valid; and (ii) the Court of Appeals also erred in not finding that Tecson was constructively dismissed when he was transferred to a new sales territory, and deprived of the opportunity to attend products seminars and training sessions.[6]

Petitioners contend that Glaxo's policy against employees marrying employees of competitor companies violates the equal protection clause of the Constitution because it creates invalid distinctions among employees on account only of marriage. They claim that the policy restricts the employees' right to marry.[7]

They also argue that Tecson was constructively dismissed as shown by the following circumstances: (1) he was transferred from the Camarines Sur-Camarines Norte sales area to the Butuan-Surigao-Agusan sales area, (2) he suffered a diminution in pay, (3) he was excluded from attending seminars and training sessions for medical representatives, and (4) he was prohibited from promoting respondent's products which were competing with Astra's products.[8]

In its Comment on the petition, Glaxo argues that the company policy prohibiting its employees from having a relationship with and/or marrying an employee of a competitor company is a valid exercise of its management prerogatives and does not violate the equal protection clause; and that Tecson's reassignment from the Camarines Norte-Camarines Sur sales area to the Butuan City-Surigao City and Agusan del Sur sales area does not amount to constructive dismissal.[9]

Glaxo insists that as a company engaged in the promotion and sale of pharmaceutical products, it has a genuine interest in ensuring that its employees avoid any activity, relationship or interest that may conflict with their responsibilities to the company. Thus, it expects its employees to avoid having personal or family interests in any competitor company which may influence their actions and decisions and consequently deprive Glaxo of legitimate profits. The policy is also aimed at preventing a competitor company from gaining access to its secrets, procedures and policies.[10]

It likewise asserts that the policy does not prohibit marriage per se but only proscribes existing or future relationships with employees of competitor companies, and is therefore not violative of the equal protection clause. It maintains that considering the nature of its business, the prohibition is based on valid grounds.[11]

According to Glaxo, Tecson's marriage to Bettsy, an employee of Astra, posed a real and potential conflict of interest. Astra's products were in direct competition with 67% of the products sold by Glaxo. Hence, Glaxo's enforcement of the foregoing policy in Tecson's case was a valid exercise of its management prerogatives.[12] In any case, Tecson was given several months to remedy the situation, and was even encouraged not to resign but to ask his wife to resign from Astra instead.[13]

Glaxo also points out that Tecson can no longer question the assailed company policy because when he signed his contract of employment, he was aware that such policy was stipulated therein. In said contract, he also agreed to resign from respondent if the management finds that his relationship with an employee of a competitor company would be detrimental to the interests of Glaxo.[14]

Glaxo likewise insists that Tecson's reassignment to another sales area and his exclusion from seminars regarding respondent's new products did not amount to constructive dismissal.

It claims that in view of Tecson's refusal to resign, he was relocated from the Camarines Sur-Camarines Norte sales area to the Butuan City-Surigao City and Agusan del Sur sales area. Glaxo asserts that in effecting the reassignment, it also considered the welfare of Tecson's family. Since Tecson's hometown was in Agusan del Sur and his wife traces her roots to Butuan City, Glaxo assumed that his transfer from the Bicol region to the Butuan City sales area would be favorable to him and his family as he would be relocating to a familiar territory and minimizing his travel expenses.[15]

In addition, Glaxo avers that Tecson's exclusion from the seminar concerning the new anti-asthma drug was due to the fact that said product was in direct competition with a drug which was soon to be sold by Astra, and hence, would pose a potential conflict of interest for him. Lastly, the delay in Tecson's receipt of his sales paraphernalia was due to the mix-up created by his refusal to transfer to the Butuan City sales area (his paraphernalia was delivered to his new sales area instead of Naga City because the supplier thought he already transferred to

Butuan).[16]

The Court is tasked to resolve the following issues: (1) Whether the Court of Appeals erred in ruling that Glaxo's policy against its employees marrying employees from competitor companies is valid, and in not holding that said policy violates the equal protection clause of the Constitution; (2) Whether Tecson was constructively dismissed.

The Court finds no merit in the petition.

The stipulation in Tecson's contract of employment with Glaxo being questioned by petitioners provides:

...

10. You agree to disclose to management any existing or future relationship you may have, either by consanguinity or affinity with co-employees or employees of competing drug companies. Should it pose a possible conflict of interest in management discretion, you agree to resign voluntarily from the Company as a matter of Company policy.

...[17]

The same contract also stipulates that Tecson agrees to abide by the existing company rules of Glaxo, and to study and become acquainted with such policies.[18] In this regard, the Employee Handbook of Glaxo expressly informs its employees of its rules regarding conflict of interest:

1. Conflict of Interest

Employees should avoid any activity, investment relationship, or interest that may run counter to the responsibilities which they owe Glaxo Wellcome.

Specifically, this means that employees are expected:

- To avoid having personal or family interest, financial or otherwise, in any competitor supplier or other businesses which may consciously or unconsciously influence their actions or decisions and thus deprive Glaxo Wellcome of legitimate profit.
- To refrain from using their position in Glaxo Wellcome or knowledge of Company plans to advance their outside personal interests, that of their relatives, friends and other businesses.
- To avoid outside employment or other interests for income which would impair their effective job performance.
- To consult with Management on such activities or relationships that may lead to conflict of interest.

1.1. Employee Relationships

Employees with existing or future relationships either by consanguinity or affinity with co-employees of competing drug companies are expected to disclose such relationship to the Management. If management perceives a conflict or potential conflict of interest, every effort shall be made, together by management and the employee, to arrive at a solution within six (6) months, either by transfer to another department in a non-counter checking position, or by career preparation toward outside employment after Glaxo Wellcome. Employees must be prepared for possible resignation within six (6) months, if no other solution is feasible.[19]

No reversible error can be ascribed to the Court of Appeals when it ruled that Glaxo's policy prohibiting an employee from having a relationship with an employee of a competitor company is a valid exercise of management prerogative.

Glaxo has a right to guard its trade secrets, manufacturing formulas, marketing strategies and other confidential

programs and information from competitors, especially so that it and Astra are rival companies in the highly competitive pharmaceutical industry.

The prohibition against personal or marital relationships with employees of competitor companies upon Glaxo's employees is reasonable under the circumstances because relationships of that nature might compromise the interests of the company. In laying down the assailed company policy, Glaxo only aims to protect its interests against the possibility that a competitor company will gain access to its secrets and procedures.

That Glaxo possesses the right to protect its economic interests cannot be denied. No less than the Constitution recognizes the right of enterprises to adopt and enforce such a policy to protect its right to reasonable returns on investments and to expansion and growth.[20] Indeed, while our laws endeavor to give life to the constitutional policy on social justice and the protection of labor, it does not mean that every labor dispute will be decided in favor of the workers. The law also recognizes that management has rights which are also entitled to respect and enforcement in the interest of fair play.[21]

As held in a Georgia, U.S.A case,[22] it is a legitimate business practice to guard business confidentiality and protect a competitive position by even-handedly disqualifying from jobs male and female applicants or employees who are married to a competitor. Consequently, the court ruled that an employer that discharged an employee who was married to an employee of an active competitor did not violate Title VII of the Civil Rights Act of 1964.[23] The Court pointed out that the policy was applied to men and women equally, and noted that the employer's business was highly competitive and that gaining inside information would constitute a competitive advantage.

The challenged company policy does not violate the equal protection clause of the Constitution as petitioners erroneously suggest. It is a settled principle that the commands of the equal protection clause are addressed only to the state or those acting under color of its authority.[24] Corollarily, it has been held in a long array of U.S. Supreme Court decisions that the equal protection clause erects no shield against merely private conduct, however, discriminatory or wrongful.[25] The only exception occurs when the state[26] in any of its manifestations or actions has been found to have become entwined or involved in the wrongful private conduct.[27] Obviously, however, the exception is not present in this case. Significantly, the company actually enforced the policy after repeated requests to the employee to comply with the policy. Indeed, the application of the policy was made in an impartial and even-handed manner, with due regard for the lot of the employee.

In any event, from the wordings of the contractual provision and the policy in its employee handbook, it is clear that Glaxo does not impose an absolute prohibition against relationships between its employees and those of competitor companies. Its employees are free to cultivate relationships with and marry persons of their own choosing. What the company merely seeks to avoid is a conflict of interest between the employee and the company that may arise out of such relationships. As succinctly explained by the appellate court, thus:

The policy being questioned is not a policy against marriage. An employee of the company remains free to marry anyone of his or her choosing. The policy is not aimed at restricting a personal prerogative that belongs only to the individual. However, an employee's personal decision does not detract the employer from exercising management prerogatives to ensure maximum profit and business success. . . [28]

The Court of Appeals also correctly noted that the assailed company policy which forms part of respondent's Employee Code of Conduct and of its contracts with its employees, such as that signed by Tecson, was made known to him prior to his employment. Tecson, therefore, was aware of that restriction when he signed his employment contract and when he entered into a relationship with Bettsy. Since Tecson knowingly and voluntarily entered into a contract of employment with Glaxo, the stipulations therein have the force of law

between them and, thus, should be complied with in good faith.”[29] He is therefore estopped from questioning said policy.

The Court finds no merit in petitioners’ contention that Tecson was constructively dismissed when he was transferred from the Camarines Norte-Camarines Sur sales area to the Butuan City-Surigao City-Agusan del Sur sales area, and when he was excluded from attending the company’s seminar on new products which were directly competing with similar products manufactured by Astra. Constructive dismissal is defined as a quitting, an involuntary resignation resorted to when continued employment becomes impossible, unreasonable, or unlikely; when there is a demotion in rank or diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.[30] None of these conditions are present in the instant case. The record does not show that Tecson was demoted or unduly discriminated upon by reason of such transfer. As found by the appellate court, Glaxo properly exercised its management prerogative in reassigning Tecson to the Butuan City sales area:

. . . In this case, petitioner’s transfer to another place of assignment was merely in keeping with the policy of the company in avoidance of conflict of interest, and thus valid...Note that [Tecson’s] wife holds a sensitive supervisory position as Branch Coordinator in her employer-company which requires her to work in close coordination with District Managers and Medical Representatives. Her duties include monitoring sales of Astra products, conducting sales drives, establishing and furthering relationship with customers, collection, monitoring and managing Astra’s inventory...she therefore takes an active participation in the market war characterized as it is by stiff competition among pharmaceutical companies. Moreover, and this is significant, petitioner’s sales territory covers Camarines Sur and Camarines Norte while his wife is supervising a branch of her employer in Albay. The proximity of their areas of responsibility, all in the same Bicol Region, renders the conflict of interest not only possible, but actual, as learning by one spouse of the other’s market strategies in the region would be inevitable. [Management’s] appreciation of a conflict of interest is therefore not merely illusory and wanting in factual basis...[31]

In *Abbott Laboratories (Phils.), Inc. v. National Labor Relations Commission*,[32] which involved a complaint filed by a medical representative against his employer drug company for illegal dismissal for allegedly terminating his employment when he refused to accept his reassignment to a new area, the Court upheld the right of the drug company to transfer or reassign its employee in accordance with its operational demands and requirements. The ruling of the Court therein, quoted hereunder, also finds application in the instant case:

By the very nature of his employment, a drug salesman or medical representative is expected to travel. He should anticipate reassignment according to the demands of their business. It would be a poor drug corporation which cannot even assign its representatives or detail men to new markets calling for opening or expansion or to areas where the need for pushing its products is great. More so if such reassignments are part of the employment contract.[33]

As noted earlier, the challenged policy has been implemented by Glaxo impartially and disinterestedly for a long period of time. In the case at bar, the record shows that Glaxo gave Tecson several chances to eliminate the conflict of interest brought about by his relationship with Bettsy. When their relationship was still in its initial stage, Tecson’s supervisors at Glaxo constantly reminded him about its effects on his employment with the company and on the company’s interests. After Tecson married Bettsy, Glaxo gave him time to resolve the conflict by either resigning from the company or asking his wife to resign from Astra. Glaxo even expressed its desire to retain Tecson in its employ because of his satisfactory performance and suggested that he ask Bettsy to resign from her company instead. Glaxo likewise acceded to his repeated requests for more time to resolve the conflict of interest. When the problem could not be resolved after several years of waiting, Glaxo was constrained to reassign Tecson to a sales area different from that handled by his wife for Astra. Notably, the Court did not

terminate Tecson from employment but only reassigned him to another area where his home province, Agusan del Sur, was included. In effecting Tecson's transfer, Glaxo even considered the welfare of Tecson's family. Clearly, the foregoing dispels any suspicion of unfairness and bad faith on the part of Glaxo.[34]

WHEREFORE, the Petition is DENIED for lack of merit. Costs against petitioners.

SO ORDERED.

Austria-Martinez and Callejo, Sr., JJ., concur.

Puno (Chairman), J., in the result.

Chico-Nazario, J., on leave.

[1] Penned by Associate Justice Rosmari D. Carandang and concurred in by Justices Conrado M. Vasquez, Jr. and Mercedes Gozo-Dadole. Rollo, pp. 22-32.

[2] Duncan Association of Detailman-PTGWO and Pedro A. Tecson, petitioners, v. Glaxo Wellcome Philippines, Inc., respondent.

[3] Now Astra Zeneca Pharmaceuticals, Inc.

[4] Rollo, pp. 28-32.

[5] Id. at 55.

[6] Id. at 9.

[7] Id. at 9-11.

[8] Id. at 14-17.

[9] Id. at 96-112.

[10] Id. at 99-100.

[11] Id. at 101-102.

[12] Id. at 102-103.

[13] Id. at 102-104.

[14] Id. at 104-105.

[15] Id. at 64.

[16] Id. at 106-110.

[17] See Decision of the Court of Appeals; Rollo, pp. 23-24.

[18] Item No. 6 of Tecson's employment contract cited by the Court of Appeals in its Decision, Id.

[19] Excerpt of Glaxo's Employee Handbook, Annex "A" of respondent's Comment, Id. at 114.

[20] Section 3, Article XIII of the Constitution provides:

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion

and growth.

[21] *Sta. Catalina College v. National Labor Relations Commission*, G.R. No. 144483, November 19, 2003.

[22] *Emory v. Georgia Hospital Service Association* (1971), DC Ga., 4 CCH EPD ¶ 7785, 4 BNA FEP Cas 891, affd (CA5) 446 F2d 897, 4 CCH EPD ¶ 7786; Cited 45 Am Jr 2d Sec. 469.

[23] 42 USCS §§2000e–2002e–17. Title VII prohibits certain employers, employment agencies, labor organizations, and joint labor-management training committees from discriminating against applicants and employees on the basis of race or color, religion, sex, national origin, or opposition to discriminatory practices.

There is no similar legislation in the Philippines.

[24] *Avery v. Midland County*, 390 US 474, 20 L. Ed 2d 45, 88 S Ct 1114, on remand (Tex) 430 SW2d 487; *Cooper v. Aaron*, 358 US 1, 3 L Ed 2d 5, 78 S Ct 1401.

[25] *District of Columbia v. Carter*, 409 US 418, 34 L.Ed.2d 613, 93 S. Ct. 602, 35 L.Ed.2d 694, 93 S. Ct. 1411; *Moose Lodge No. 107 v. Irvis*, 407 US 163, 32 L.Ed.2d 627, 92 S. Ct. 1965; *United States v. Price*, 383 US 787, 16 L.Ed. 2d 267, 86 S. Ct. 1152; *Burton v. Wilmington Parking Authority*, 365 US 715, 6 L.Ed.2d 45, 81 S. Ct. 856; *Shelley v. Kraemer*, 334 US 1, 92 L.Ed.1161, 68 S. Ct. 836, 3 ALR2d 441; *United States v. Classic*, 313 US 299, 85 L.Ed 1368, 61 S. Ct. 1031, 86 L.Ed 565, 62 S. Ct. 51; *Nixon v. Condon*, 286 US 73, 76 L.Ed. 984, 52 S. Ct. 484, 88 ALR 458; *Iowa-Des Moines Nat. Bank v. Bennet*, 284 US 239, 76 L.Ed 265, 52 S. Ct. 133; *Corrigan v. Buckley*, 271 US 323, 70 L.Ed. 969, 46 S. Ct. 521; U.S. — *Adickes v. S. H. Kress & Co.*, N.Y., 90 S. Ct. 1598, 398 U.S. 144, 26 L. Ed. 2d 142.

[26] The equal protection clause contained in the Fourteenth Amendment of the U.S. Constitution is a restriction on the state governments and operates exclusively upon them. It does not extend to authority exercised by the Government of the United States. 16 A Am Jur 2d §742.

[27] *Gilmore v. Montgomery*, 417 US 556, 41 L Ed 2d 304, 94 S Ct 2416; *Evans v. Newton*, 382 US 296, 15 L Ed 2d 373, 86 S Ct 486; *Anderson v. Martin*, 375 US 399, 11 L Ed 2d 430, 84 S Ct 454; *Peterson v. Greenville*, 373 US 244, 10 L Ed 2d 323, 83 S Ct 1119; *Burton v. Wilmington Parking Authority*, *supra* note 25.

[28] Decision of the Court of Appeals, Rollo, p. 28.

[29] Article 1159, Civil Code. See *National Sugar Trading and/or the Sugar Regulatory Administration v. Philippine National Bank*, G.R. No. 151218, January 18, 2003, 396 SCRA 528; *Pilipinas Hino, Inc. v. Court of Appeals*, G.R. No. 126570, August 18, 2000, 338 SCRA 355.

[30] *Leonardo v. National Labor Relations Commission, et al.*, G.R. Nos. 125303, and 126937, June 16, 2000, 333 SCRA 589.

[31] Rollo, pp. 30-31.

[32] G.R. No. L-76959, October 12, 1987, 154 SCRA 713.

[33] *Id.* at 719.

[34] Decision of the Court of Appeals, Rollo, pp. 24-27.

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