

DESTILERIA LIMTUACO & CO., AND CONVOY MARKETING CORPORATION, PETITIONERS, VS. ADVERTISING BOARD OF THE PHILIPPINES, RESPONDENT.

G.R. No. 164242. November 28, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

The present dispute focuses mainly on the power of the Advertising Board of the Philippines (AdBoard) to require its clearance prior to commercial advertising and to impose sanctions on its members who broadcast advertisements without its clearance.

AdBoard is an umbrella non-stock, non-profit corporation created in 1974^[1] composed of several national organizations in the advertising industry, including: Advertising Suppliers Association of the Philippines (ASAP), Association of Accredited Advertising Agencies Philippines (4As), Cinema Advertising Association of the Philippines (CAAP), Independent Blocktimers Association of the Philippines (IBA), Kapisanan ng mga Brodkaster ng Pilipinas (KBP), Outer Advertising Association of the Philippines (OAAP), the Marketing & Opinion Research Society of the Philippines (MORES), Philippine Association of National Advertisers (PANA) and the Print Media Organization (PRIMO).

Destileria Limtuaco & Co., Inc. (Destileria) was formerly a member of PANA.

In January 2004, Destileria and Convoy Marketing Corporation (Convoy), through its advertising agency, SLG Advertising (SLG), a member of the 4As, applied with the AdBoard for a clearance of the airing of a radio advertisement entitled, "Ginagabi (Nakatikim ka na ba ng Kinse Anyos)."

AdBoard issued a clearance for said advertisement. Not long after the ad started airing, AdBoard was swept with complaints from the public. This prompted AdBoard to ask SLG for a replacement but there was no response. With the continued complaints from the public, AdBoard, this time, asked SLG to withdraw its advertisement, to no avail. Thus, AdBoard decided to recall the clearance previously issued, effective immediately.^[2] Said decision to recall was conveyed to SLG and AdBoard's members-organizations.^[3]

Petitioners protested the AdBoard's decision, after which, they filed a Complaint which was later on amended, for Dissolution of Corporation, Damages and Application for Preliminary Injunction with prayer for a Temporary Restraining Order with the Regional Trial Court (RTC) of Makati, docketed as Civil Case No. 04-277.^[4] The Amended Complaint sought the revocation/cancellation of AdBoard's registration and its dissolution on the grounds, inter alia, that it was usurping the functions of the Department of Trade and Industry (DTI) and the Movie and Television Review and Classification Board (MTRCB) by misrepresenting that it has the power to screen, review and approve all radio and television advertisements. Petitioners seek the nullity of AdBoard's "Code of Ethics for Advertising" and "ACRC Manual of Procedures for Screening and Filing of Complaints and Appeals."^[5]

On May 20, 2004, AdBoard issued ACRC Circular No. 2004-02, reminding its members-organizations of Article VIII of the ACRC Manual of Procedures, which prohibits the airing of materials not duly screened by it.

Petitioners then filed with the Ombudsman a complaint for misconduct and conduct prejudicial to the best interest of the service against AdBoard's officers.

On July 16, 2004, petitioners filed the present petition for writ of prohibition and preliminary injunction under Rule 65 of the Rules of Court.

Petitioners argue that their right to advertise is a constitutionally protected right, as well as a property right. Petitioners believe that requiring a clearance from AdBoard before advertisements can be aired amounts to a deprivation of property without due process of law. They also argue that AdBoard's regulation is an exercise of police power which must be subject to constitutional proscriptions.

On the other hand, AdBoard seeks the dismissal of the petition for failure to observe the rule on hierarchy of courts and for failure to comply with certain requirements for the filing of the petition, namely: statement of material dates, attachment of certified true copy of ACRC Circular No. 2004-02, and defect in the certification of non-forum shopping.

As to the merits of petitioners' arguments, AdBoard counters that it derives its authority from the voluntary submission of its members to its jurisdiction. According to AdBoard, there is no law that prohibits it from assuming self-regulatory functions or from issuing clearances prior to advertising.

The petition is bereft of merit.

First of all, the petition filed in this case is one for prohibition, i.e., to command AdBoard to desist from requiring petitioners to secure a clearance and imposing sanctions on any agency that will air, broadcast or publish petitioners' ads without such clearance.[6]

Under Section 2, Rule 65 of the Rules of Court, for petitioners to be entitled to such recourse, it must establish the following requisites: (a) it must be directed against a tribunal, corporation, board or person exercising functions, judicial, quasi-judicial or ministerial; (b) the tribunal, corporation, board or person has acted without or in excess of its/his jurisdiction, or with grave abuse of discretion; and (c) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[7]

A respondent is said to be exercising judicial function by which he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. Quasi-judicial function is a term which applies to the action and discretion of public administrative officers or bodies, which are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature. Ministerial function is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard for the exercise of his/its own judgment upon the propriety or impropriety of the act done.[8]

The acts sought to be prohibited in this case are not the acts of a tribunal, board, officer, or person exercising judicial, quasi-judicial, or ministerial functions.[9] What is at contest here is the power and authority of a private organization, composed of several members-organizations, which power and authority were vested to it by its own members. Obviously, prohibition will not lie in this case. The definition and purpose of a writ of prohibition excludes the use of the writ against any person or group of persons acting in a purely private capacity, and the writ will not be issued against private individuals or corporations so acting.[10]

Moreover, it appears that petitioners already filed Civil Case No. 04-277, wherein they sought the revocation/cancellation of AdBoard's registration and dissolution and the nullity of AdBoard's Code of Ethics for Advertising and ACRC Manual of Procedures for Screening and Filing of Complaints and Appeals (ACRC Manual), with the RTC. Although dubbed differently, the present petition is obviously an attempt on petitioners' part to have AdBoard's authority challenged in yet another forum. This is a clear act of forum shopping on petitioners' part.

Forum shopping has been defined as 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" or "the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum other than by appeal or the special civil action of certiorari."^[11] The test in determining the presence of forum shopping is whether in the two or more cases pending, there is identity of: (a) parties; (b) rights or causes of action; and (c) reliefs sought,^[12] such that any judgment rendered in the other action will, regardless of which party is successful, amount to res adjudicata in the action under consideration: all the requisites, in fine, of auter action pendant.^[13]

Civil Case No. 04-277 and the present petition both involve the same parties. The petitioners in this case are Destileria Limtuaco & Co., Inc. and Convoy Marketing Corp., while the respondent is AdBoard. On the other hand, the plaintiffs in Civil Case No. 04-277 also are petitioners, while the defendant is still AdBoard, only with the addition of Oscar T. Valenzuela, who is the Executive Director of AdBoard.

Both cases also raise practically the same basic causes of action/issues and seek the same relief.

The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action.^[14] The principle applies even if the reliefs sought in the two cases may be different.^[15] Otherwise, a party could easily escape the operation of res judicata by changing the form of the action or the relief sought.^[16]

There is identity in the causes of action in Civil Case No. 04-277 and the present petition for prohibition inasmuch as there is identity in the facts and evidence essential to the resolution of the identical issue raised in these cases. Both cases were instituted after AdBoard recalled the clearance for petitioners' Ginagabiadvertisement, and its members refused to air the same. Also, the main issue raised in the present petition and one of the issues raised in Civil Case No. 04-277 refer to AdBoard's authority and the legality of the AdBoard Code of Ethics and ACRC Manual. The determination of this issue in either case would clearly amount to res judicata in regard to the other. Consequently, the present petition should be dismissed.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] The AdBoard was originally named the Philippine Board of Advertising (PBA) when it was first formed in May 1974.

[2] Rollo, pp. 128-129.

[3] Id.

- [4] Entitled "Destileria Limtuaco & Co., Inc. and Convoy Marketing v. Advertising Board of the Philippines, Inc. and Oscar T. Valenzuela."
- [5] Rollo, pp. 186-187.
- [6] Rollo, p. 17.
- [7] Longino v. General, G.R. No. 147956, February 16, 2005, 451 SCRA 423, 436.
- [8] Metropolitan Bank and Trust Co., Inc. v. National Wages and Productivity Commission, G.R. No. 144322, February 6, 2007, 514 SCRA 346, 357.
- [9] Rivera v. Espiritu, 425 Phil. 169, 180 (2002).
- [10] 63C Am. Jur. 2d Prohibition § 39.
- [11] Clark Development Corporation v. Mondragon Leisure and Resorts Corporation, G.R. No. 150986, March 2, 2007, 517 SCRA 203, 213.
- [12] Hyrdro Resources Contractors Corporation v. National Irrigation Administration, G.R. No. 160215, November 10, 2004, 441 SCRA 614, 634.
- [13] First Philippine International Bank v. Court of Appeals, 322 Phil. 280, 306 (1996),
- [14] Luzon Development Bank v. Conquilla, G.R. No. 163338, September 21, 2005, 470 SCRA 533, 557.
- [15] Korea Exchange Bank v. Gonzales, G.R. Nos. 142286-87, April 15, 2005, 456 SCRA 224.
- [16] Luzon Development Bank case, supra note 14.

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